

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO: 2015-M-267

RICHARD EPPS

FILED

PETITIONER

VS.

FEB 24 2015

STATE OF MISSISSIPPI

SUPREME COURT CLERK

RESPONDENT

**PETITION SEEKING REVIEW OF JUDGE'S ACTION
AND MOTION FOR WRIT OF PROHIBITION
AND MOTION FOR ADDITIONAL TIME TO SUPPLEMENT WITH BRIEF**

COMES NOW, PETITIONER/DEFENDANT, by and through the Office of the Hinds County Public Defender, pursuant to authority vested through Rule 1.15 Miss. Uniform Rules of Circuit and County Court and Rule 48B Miss. Rules of Appellate Procedure, and files this his *Petition Seeking Review Of Judge's Action*, and would state unto this Honorable Court the following facts, to-wit:

Petitioner is seeking immediate relief by way of *Writ of Prohibition* requesting this Honorable Court to stay all transfers of Hinds County Public Defender (HCPDO) cases to private counsel pending a hearing on the *Petition Seeking Review of Judge's Action*. In multiple orders filed February 10-13, 2015, Hinds County Circuit Court Judge Jeff Weill stated that he would allow the Public Defender to transfer all of Assistant Public Defender Alison Kelly's cases to other Assistant Public Defenders within fourteen (14) days or that he would transfer the cases to other counsel as will be discussed below. An immediate stay is necessary to prevent such illegal and wrongful transfer of HCPDO clients.

This petition is being filed simultaneously with fifty-four other similar motions seeking review of the Circuit Court's denial of the Petitioners' *Motion For Recusal* filed in the Circuit Court of Hinds County. The *Motion for Recusal* is based upon actions by Circuit Court Judge

Jeff Weill that exceed the scope of his jurisdiction and authority; that violate the Mississippi rules of civil and criminal procedure; that violate statutory mandates set forth in the Mississippi Code of 1972; that disturb the Petitioner's attorney-client relationship; that violate the Petitioner's federal and state constitutional rights to equal protection and right to contract; and that violate the Petitioner's federal and state constitutional rights to due process and a fair trial.

Petitioner is also seeking additional time to file a supporting brief for comprehensive clarification of the issues raised in this petition.

Petitioner appears before this Court *In Forma Pauperis*, having been found indigent in the Hinds County Circuit Court.

RELEVANT PLEADINGS FILED IN THIS CAUSE:

The following pleadings have been filed in this or similarly situated cases relating to the issue of recusal and authority of Judge Weill to appoint private counsel when the HCPDO has no conflict and has been appointed to represent the Defendant in Municipal and/or County Court:

- Exhibit A - Motion for Clarification On Representation (representative copy)
- Exhibit B - Motion to Recuse
- Exhibit C - Motion for Stay of Proceedings and Request for Hearing
- Exhibit D - Opinion and Order Denying Motion For Recusal
- Exhibit E - Motion for Reconsideration (representative copy)
- Exhibit F - Order Denying Motion For Reconsideration

SUMMARY OF FACTS AND EVENTS:

1. In December 2014, an attorney from the Office of the Hinds County Public Defender (HCPDO) made several email requests of Judge Weill's Court Administrator for a copy of the December arraignment docket. (*Copies of the emails have been attached hereto as Exhibit "G" and incorporated herein by reference.*) In spite of the requests, the Court Administrator failed to provide any of the three Assistant Public Defenders (APD) assigned to Judge Weill's Court with the requested arraignment docket.

2. In January 2015, the HCPDO became aware that the Court had systematically increased the appointment of private counsel to most of the indigent Defendants where no conflict existed; where no request had been made by the Defendant for counsel other than the HCPDO; and where the HCPDO had already been appointed at the Municipal and/or County Court level.¹ Further, at the time of appointment of private counsel, the Court did not conduct any in-court hearing on this Defendant to determine if good cause existed to depart from the statutory mandate that requires appointment of the Public Defender to all indigent defendants in the absence of conflict or the right to counsel being waived by such Defendant. And importantly, the Court did not release the HCPDO as counsel in the appointment order of private counsel.
3. On January 14, 2015, HCPDO, by and through APD Alison Kelly, filed several *Motions for Clarification of Representation (Exhibit "A")* on behalf of several Defendants, requesting that Court articulate the reasoning behind appointment of private counsel where an attorney-client relationship had already been established between HCPDO and more specifically APD Kelly and the Defendant and further asserting that the appointment of private counsel placed an unnecessary burden on the tax payers of Hinds County. The Motion for Clarification of Representation was not filed in the case at bar due to Judge Weill's delivery of letters to the Hinds County Board of Supervisors and Hinds County Public Defender that will be addressed later in this petition. As a result of the delivery of these letters, a decision was made to file a Motion for Recusal in all cases assigned to APD Alison Kelly.

¹ At the time of the appointment of private counsel in these cases, there was no conflict existing. As well, the HCPDO had already been appointed to the Defendant and represented him in Municipal Court where attorneys and investigators from the HCPDO began to build a defense strategy.

4. On January 15, 2015, (the day after the referenced motions for clarification on representation were filed by HCPDO and were still pending before the Court), Judge Weill published a letter to the Hinds County Board of Supervisors, couched as a “Budget Item,” wherein he sets forth a justification of the taxpayer expense of private counsel by asserting that APD Kelly is both incompetent and non law-abiding. In that the letter was delivered on the heels of the filing of the motion for clarification and attempts to justify the issues raised by the motion, a reasonable person can believe that the letter was simply a pretext to explain unnecessary use of taxpayer funds. *(A copy of the letter to the Board of Supervisors has been attached hereto as Exhibit “A.1” and incorporated herein by reference.)*

- a. In the letter, Judge Weill asserts that he had been informed “Ms. Kelly is engaged in the private practice of law which is directly contrary to Mississippi law” and that he had “recently” become informed that Ms. Kelly “apparently” resides in Madison County in the Reunion residential subdivision.
- b. As well, Judge Weill asserts that APD Kelly is incompetent, but fails to articulate anything to support such an allegation,² and asserts that APD Kelly fails to comply with the Mississippi Rules of Court, but fails to articulate with any sort of specificity the alleged rule, the alleged violation, the alleged date or anything that can relate such an asserted violation to this Defendant.
- c. Lastly, in the letter, Judge Weill assures the Board of Supervisors that he will be a “good steward of county funds” by appointing private counsel only when necessary to

² It should be noted that during Judge Weill’s four-year term, APD Kelly had tried more cases than any other defense attorney practicing in his Court. Further, APD Kelly has obtained more not guilty verdicts or lesser related verdicts than any other defense attorney practicing in his Court, not to mention that APD Kelly has plead or received nolle prosequere on more cases than any other defense attorney practicing in his Court. That being said, it is only on the heels of a motion for clarification that Judge Weill is now asserting that APD Kelly is incompetent.

ensure competent representation;” yet, as recently as February 13, 2015, Judge Weill appointed a private lawyer to represent the indigent Defendant in *State v. Dye*, Cause No. 14-1-012, where the HCPDO had been appointed to represent Mr. Dye in the lower courts, where no conflict existed, where the Defendant had an established attorney-client relationship with the HCPDO, and where no hearing was conducted in court to determine the good cause necessary for departure from the statutory mandate to appoint the Public Defender to all indigent Defendants.

- d. Importantly, all of the allegations raised by Judge Weill in the letter to the Board of Supervisors, that form the basis for his “good cause” shown, have never been addressed in open court during a statutorily mandated hearing; and further, neither HCPDO nor APD Kelly has ever been given any opportunity to defend against these allegations that formed the basis of the Court’s opinion, even though HCPDO, by and through APD Kelly, have requested a hearing on these assertions on several occasions.
5. On January 15, 2015, Judge Weill also delivered a letter to Hinds County Public Defender Michele Purvis Harris. In the letter, Judge Weill asserts “ongoing problems of unprofessional conduct by Assistant Public Defender Alison Kelly” but fails to articulate with any specificity inappropriate conduct that forms the basis of that opinion. *(A copy of the letter to Michele Purvis Harris has been attached hereto as Exhibit “A.2” and incorporated herein by reference.)*
 - a. Judge Weill raises the same allegations regarding APD Kelly engaging in the unlawful practice of law. He further asserts that “Ms. Kelly’s conduct has negatively impacted her clients,” a claim that is not supported by fact and can only be construed

as the Court's inability to preside over APD Kelly's cases fairly and impartially due to personal animosity toward APD Kelly by the Court.

- b. Judge Weill asserts that "Ms. Kelly's conduct has negatively impacted her clients," a claim that is not supported by fact and can only be construed as the Court's inability to preside over APD Kelly's cases fairly and impartially due to personal animosity toward APD Kelly by the Court.
- c. Judge Weill goes on to say again "...MS. Kelly's detrimental conduct, which has continued and has resulted in serious consequences for several clients..." another claim that is not supported by fact and can only be construed as the Court's further inability to be fair and impartial in the administration of justice when it comes to HCPDO and more specifically APD Kelly's clients.³
- d. Judge Weill again asserts "Ms. Kelly's conduct has begun to have direct adverse implications on her ability to represent indigent defendants in my courtroom" a third claim that is not supported by fact and can only be construed as the Court's inability to remain fair and impartial toward HCPDO and more specifically APD Kelly's clients.
- e. In Paragraph 6, Judge Weill states to PD Michele Purvis Harris, "I will permit you to assign Ms. Kelly's caseload among the other assistant public defenders if you so choose." The power of the Hinds County Public Defender is statutorily mandated pursuant to §25-32-3, Mississippi Code of 1972 Ann. (as amended) and it is the

³ It should be noted that the Court has taken no remedial action against APD Kelly for these alleged violations during the four-year term of Judge Weill with one exception: during the cases of *State v. David Thomas* and *State v. Tony Alexander*, the case made a finding on the record that APD Kelly had willfully refused to file jury instructions in both cases and found APD Kelly in criminal contempt for such refusal. Subsequent to that finding, the record revealed that APD Kelly never refused to do anything the Court had asked in either case and the Court ultimately set aside the orders of contempt.

responsibility of the Public Defender to establish duties and responsibilities of each Assistant Public Defender. See Attorney General Opinion to Honorable Kent C. Haney dated June 6, 2003. (2003WL2659123 (Miss.A.G.)) Likewise, this Honorable Court just recently upheld the integrity of the statutory authority of a department head to determine the rules, assignments and guidelines of employees; and not the Court's authority. (See *Tyrone Lewis vs. Hinds County Circuit Court*, 2013-CA-01842-SCT(MISS.))

f. Lastly, Judge Weill cites two examples of "Ms. Kelly's most recent failures to comply with the applicable rules;" namely *State v. Mario Rucker* and *State v. Cortaia Washington*.⁴ He attaches a portion of the transcript from *State v. Mario Rucker* wherein APD Kelly is questioned with regard to her interaction with a witness. However, it should be noted that after questioning APD Kelly on the record regarding the incident, the Court failed to find her in violation of the rules or in contempt. Further, neither example can be construed as the basis for a claim of incompetence or detrimental conduct.

6. Following the Courts letters to the Hinds County Board of Supervisors and the Hinds County Public Defender, the Defendant filed a *Motion For Recusal* and a *Motion For Stay Of Proceedings And Request For Hearing*. (Exhibits "B" and "C") The issue of the Court's violation of the statutory mandate to conduct an in-court hearing to determine

⁴ In *Rucker*, while there is no rule applicable to the Court's claim, APD Kelly self-reported that she had spoken to a witness in the hallway after which the Court moved on in the trial and did not take any sanctions against APD Kelly. There was no adverse impact on *Rucker*, who was charged with murder, because the jury found him not guilty of murder, not guilty of second degree murder, and not guilty of manslaughter. The jury only found *Rucker* guilty of aggravated assault based upon a lesser-related offense jury instruction that was sua sponte offered by the Court, not by the parties. In *Washington*, APD Kelly filed a second motion asking that the Court recuse and relied upon a Court of Appeals opinion that had recently been overruled by the Supreme Court. The oversight was inadvertent and was not a "knowingly false representation."

“good cause” prior to appointing counsel other than the Public Defender is also addressed in the motion; however, the substantive basis for the motion was largely the Court’s self-proclaimed inability to be fair and impartial in cases where APD Kelly was counsel of record. The motion further addresses the issue that the legal relationship with a Defendant is an attorney-client relationship, not an attorney-court relationship.

7. The Court responded without a hearing with an *Opinion And Order Denying Motion for Recusal* where the Court denied the motion based upon lack of standing due to a Court perceived violation of the Grand Jury secrecy rules and statutes.
8. Even though Judge Weill declined in this particular case to consider the merits of the *Motion to Recuse*, it is important for this Court to consider the rationale for Judge Weill’s opinion in many of the companion cases before this Court on these issues. In many of the opinions filed by Judge Weill in those companion cases, he set out in multiple pages the Court’s procedure for appointment of indigent counsel; however, he fails to address the fact that at the time of indictment and arraignment, the Defendant had already been appointed at the Municipal and/or County Court level and was already engaged in an attorney-client relationship with the HCPDO. Judge Weill fails to offer any authority that allows a Judge to disrupt an established attorney-client relationship, when the Defendant is indigent, when no request has been made by the Defendant for different counsel, and when no conflict has arisen.
 - a. In those cases, Judge Weill goes on to say in the order that he found “good cause” to appoint private counsel in this matter; however, he never conducted any in court hearing to determine good cause as is mandated by §25-32-13, Mississippi Code of 1972 Ann. (as amended).

- b. Importantly, while Judge Weill presumably conducted a hearing at arraignment to make a finding of indigence, he never conducted a hearing to establish “good cause” to appoint private counsel to an indigent Defendant **prior** to the appointment, when the Public Defender had already been appointed to represent the Defendant. It should be noted that the HCPDO was not in attendance during this court proceeding due to failure of the Court Administrator to tender the arraignment docket to the HCPDO despite multiple requests by APD Kelly.
- c. Judge Weill evades the fact that by statutory mandate, all indigent Defendants shall be appointed to the Public Defender. §25-32-9, Mississippi Code of 1972 Ann. (as amended) which states in relevant part that “... Upon the signing of such affidavit by such person, the public defender **shall** represent said person unless the right to counsel be waived by such person.” (emphasis added) Further, §25-32-9, Mississippi Code of 1972 Ann. (as amended) allows for appointment of private counsel in limited circumstances, one of which is when conflict of interest exists. None existed in this matter. If no conflict exists, an appointment of anyone other than the public defender requires “good cause shown in the trial court or on appeal.” Neither HCPDO nor APD Kelly was ever involved in a hearing in this matter for “good cause” shown to allow the appointment of other court appointed counsel.
- d. Most notably, Judge Weill again asserts in the opinion that “permitting Ms. Kelly to appear on behalf of this Defendant would prevent the parties [particularly the Defendant] from receiving a fair trial...” a statement that by any reasonable standard can be construed as Judge Weill’s own admission that he cannot be fair and impartial when it comes to presiding over cases where APD Kelly is counsel of record.

- e. Judge Weill asserts multiple times that he has no personal bias toward Ms. Kelly; however, in the case of *State v. Ashley Bryant*, the co-Defendant of *Cortia Washington supra*, Ms. Bryant's attorney filed a motion for recusal citing among other things that Judge Weill's animosity toward Alison Kelly is so apparent in the courtroom, her client is afraid that his hatred of Ms. Kelly will impair his ability to rule fairly in the co-Defendant's trial. (*A copy of relevant parts of the referenced Motion For Recusal in State v. Ashley Bryant has been attached hereto as Exhibit "H" and incorporated herein by reference*) Where other attorneys and Defendants observe behavior by the Court as animus toward APD Kelly, it has to be construed that such behavior is evidence that Judge Weill cannot be fair and impartial when hearing cases where APD Kelly is counsel of record.
9. A *Motion for Reconsideration (Exhibit "E")* was filed in this case wherein the Defendant set forth reasons why the Grand Jury secrecy rules and statutes do not apply to the facts and circumstances in the case at bar. The Defendant asserted standing to bring the motion because neither URCCC 7.04 nor Miss. Code Ann. §97-9-53 applies to the facts and circumstances in this matter.
- a. The original *Motion for Discovery and Request for Plea Offer and Other Relief* referenced in Court's opinion, filed in response to the State's notification that an indictment had issued in this case, was filed with the Hinds County Circuit Court Clerk (Barbara Dunn who is an "authorized person" within the language and meaning of the laws cited by Judge Weill) and upon the Hinds County District Attorney (Robert Shuler Smith who is also an "authorized person" within the language and meaning of the laws cited by Judge Weill).

b. The language of both the cited rule and cited statute necessarily allows for communication between officers of the Court and authorized persons; otherwise, under the Court's reading of the law, a Sheriff would never having standing to speak with any Defendant to arrange for pick up an indictment and there would never be a mechanism by which Defendants could ever efficiently be served with indictment. It should further be noted that once an indictment issues and is assigned to a court, prior to service of the indictment upon the Defendant, the file is entered into the Dynacom system which is accessible by all of the employees of Hinds County.

10. The Court subsequently denied the Motion for Reconsideration in the Court's *Order Denying Motion For Reconsideration (Exhibit "F")*.

ISSUES

11. The Court has failed to comply with the statutory mandate to appoint the Public Defender in all indigent criminal cases pursuant to §25-32-9 Mississippi Code of 1972 Ann. (as amended).

12. The Court has failed to conduct any in court hearings to support appointment of private counsel pursuant to §25-32-9 Mississippi Code of 1972 Ann. (as amended).

13. The Court has in its own words admitted through the aforementioned pleadings that the court cannot be fair and impartial in hearing cases where APD Alison Kelly is counsel of record.

14. Other lawyers and Defendants than those in this case recognize Judge Weill's animosity toward APD Kelly in the courtroom, thereby establishing that a reasonable person would find the Judge unable to remain fair and impartial in cases where APD Kelly is counsel of record.

15. The Court has violated the Defendant's federal rights to equal protection and rights to contract by disrupting an existing attorney-client relationship without cause. Had the Defendant been a wealthy Defendant with paid counsel, the Court would have no authority to replace a privately hired attorney with a different attorney of the court's choosing without a request from the Defendant to do so; and, it would be a violation of that Defendant's right to contract among other rights. An indigent person is equally entitled to the same protections under the law. Because the Defendant was appointed to the HCPDO at the Municipal and County Court levels, he already had an established attorney-client contract in place, regardless of who was paying for his legal services. It was incumbent upon Judge Weill to preserve that attorney-client contract without a request from the Defendant to set the appointment aside. The Court cannot and should not treat a poor man with less respect than a wealthy man for the only reason being that he is poor.

CONCLUSION

Given Judge Weill's own statements in the various pleadings that he cannot be fair and impartial in cases where ADP Kelly is counsel of record, Judge Weill should recuse from presiding over this case. That the legal relationship in any case is between the Defendant and the attorney, not the Defendant and the Court and the Court has no authority to disrupt that contractual relationship barring extraordinary circumstances. That it is a violation of the Defendant's federal and state constitutional rights to equal protection, rights to contract, rights to due process and rights to a fair and impartial trial for Judge Weill to preside over a case where he cannot be fair and impartial due to animosity toward the attorney, to disrupt the Defendant's

legal representation without an in court finding of “good cause” and to do to a poor man that which he could not do to a wealthy man.

As well, Judge Weill has no statutory or legal authority to manage the business of the HCPDO and should be enjoined from creating “or else” mandates that attempt to undermine and usurp the authority of the Public Defender.

Finally, all orders issued by Judge Weill in these recusal cases should be stayed and a Writ of Prohibition should be ordered by this Court pending a hearing on the issues.

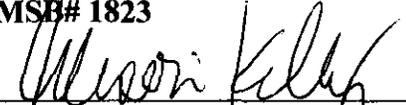
WHEREFORE, PREMISES CONSIDERED, the Defendant humbly moves this Honorable Court to order a Writ of Prohibition staying all proceedings in this matter pending a hearing on the recusal and other motions filed in this case. The Petitioner further moves this Honorable Court to issue a Writ of Prohibition enjoining Judge Weill from appointing future indigent defendants to private counsel without an in-court hearing on “good cause” where the HCPDO is properly noticed and in attendance. The Petitioner further requests a hearing on the collective motions to recuse. And finally, the Petitioner moves this Honorable Court to vacate Judge Weill’s order denying the Defendant’s *Motion for Recusal*.

AND, since this Court most recently handed down, five days ago, *Tyrone Lewis vs. Hinds County Circuit Court, 2013-CA-01842-SCT(MISS)*, Petitioner requests additional time for further research where the unambiguity of a statute is at issue and the plain language of this statute is in question.

AND, if the Petitioner has failed to move for adequate relief, he now moves for such other permissible relief as this Court may entertain in good conscience.

SO PETITIONED on this the 24th day of February, 2015.


MICHELE PURVIS HARRIS
HIND COUNTY PUBLIC DEFENDER
MSB# 1823


ALISON KELLY, MSB#101050

CERTIFICATE OF SERVICE

I, ALISON KELLY, counsel of record for the Defendant, do hereby certify that I have this day hand delivered a true and correct copy of the foregoing *Petition Seeking Review Of Judge's Action And Motion For Writ Of Prohibition And Motion For Additional Time To Supplement With Brief* to the usual and customary place of business of the following interested parties:

Circuit Court Judge Jeff Weill
Hinds Court Circuit Court Judge
Hinds County Courthouse – Second Floor

Hon. Robert Shuler Smith
Hinds County District Attorney
Hinds County Circuit Court House, Fifth Floor

SO CERTIFIED on this the 24th day of February, 2015.


ALISON KELLY, MSB#101050

EXHIBIT "A"

Motion for Clarification On Representation

IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

PLAINTIFF

VS.

DEWAYNE THOMPSON

DEFENDANT

FILED

JAN 14 2015

CAUSE NO: 14-0-962(1)(2)CRW

BARBARA DUNN, CIRCUIT CLERK

BY

D.C.

MOTION FOR CLARIFICATION ON REPRESENTATION

COMES NOW, DEFENDANT DEWAYNE THOMPSON, by and through the Office of the Hinds County Public Defender (HCPDO), and files this his *Motion For Clarification On Representation*, and in support thereof would state unto this Honorable Court the following facts, to-wit:

1. That the Defendant was arrested and charged in this cause with a murder and armed car-jacking that is alleged to have occurred on September 31, 2014.
2. That there are no co-defendants in this case and there is no conflict existing between the HCPDO and this Defendant, the Complainant, or any of the known witnesses in this case.
3. That on September 2, 2014, Mr. Thompson was provided an Initial Appearance hearing at the municipal level, JPD Cause No. 14-162783, where the HCPDO was appointed to represent him. Copies of the affidavit of indigency, order of appointment and order transferring the case to County Court have been attached hereto as collective Exhibit A and incorporated herein by reference.
4. That the case was accepted in County Court, Cause No. 14-0852, and a preliminary hearing was conducted on October 13, 2014, where the HCPDO representation of Mr. Thompson continued at the preliminary hearing and the case was bound over to the Grand Jury. A copy of the order binding the case to over the grand jury and appointing

Alison Kelly (Assistant Public Defender for Hinds County) has been attached hereto as Exhibit B and incorporated herein by reference.

5. That the case was indicted on November 20, 2014 as the above styled cause number.
6. That from the onset, attorneys and investigators from the HCPDO have worked with Mr. Thompson and potential witnesses in preparation of his defense.
7. That on December 17, 2014, this Court conducted an arraignment hearing in this cause. A copy of the affidavit of indigency and arraignment order have been attached hereto as Exhibit C and incorporated herein by reference.
8. That Section 25-32-9 Mississippi Code of 1972 Ann. (amended) states in relevant part:

“When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, **the public defender shall represent said person** unless the right to counsel be waived by such person. Provided further, a statement shall be executed by the alleged indigent, under oath, listing all assets available to the indigent for the payment of attorney's fees, including the ownership of any property, real or personal, and setting out therein the alleged indigent's employment ~~status, number of dependents, income from any source, the ability of his parents or spouse to provide an attorney's fee, and any other information which might prove or disprove a finding of indigency.~~ The affidavit and statement shall be a part of the record in the case and shall be subject to review by the appropriate court. Based on review of the affidavit, statement or other appropriate evidence, if the appropriate court finds that the defendant is not indigent, said court shall terminate the representation of the defendant by the public defender.” (emphasis added).

Further, Section 25-32-13 Mississippi Code of 1972 Ann. (amended) states:

“(1) If the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15 , Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

(2) If the court finds that an indigent is a defendant in a case of such a nature that he cannot be properly represented by the public defender alone, the court shall appoint additional counsel to assist the public defender as provided in Section 99-15-15 , Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17 , Mississippi Code of 1972, shall apply.”

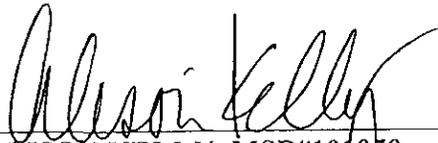
9. That December 19, 2014, this Court issued an *Order Appointing Counsel For Indigent Defendant In A Criminal Case*, wherein the Court appointed a private attorney, Randy Harris, MSB# 1975, to represent the Defendant in this case. A copy of the order has been attached hereto as Exhibit D and incorporated herein by reference.
10. That because no conflict exists between the Defendant and the HCPDO; because the HCPDO has worked with the Defendant in preparation of this case; because the HCPDO was appointed at the municipal level; and because the HCPDO appointment was continued at the County Court level, clarification is necessary as to the role Randy Harris will play in the representation of Mr. Thompson.
11. That to date, the HCPDO continues to represent Mr. Thompson, never having been released by the Court.
12. That if Mr. Harris is appointed as joint representation for Mr. Thompson, although the attorneys at the HCPDO do not feel that joint representation is necessary in this case and that appointment of a private attorney is an unnecessary burden on the taxpayers of Hinds County, the HCPDO requests a scheduling hearing so that the attorneys understand the individual roles expected by the Court in this case.
13. In order for Mr. Harris to be appointed in lieu of the HCPDO, the Court would be required to issue a termination order and make a finding on the record the reason for termination of representation by the HCPDO for indigent defendants. Such a finding would need to include the Court's reason for a departure from the statutorily mandated appointment of this indigent defendant to the HCPDO, given that no conflict exists in this particular case and no good cause has been shown.

14. That until such hearing occurs and an order by the Court issues, the Office of the Hinds

County Public Defender will continue in representation of Mr. Thompson.

WHEREFORE PREMISES CONSIDERED, the Defendant Dewayne Thompson humbly moves this Court to issue an order setting forth representation as requested above.

SO MOVED on this the 14th day of January, 2015.


ALISON KELLY, MSB#101050

OFFICE OF THE HINDS COUNTY PUBLIC DEFENDER
499 SOUTH PRESIDENT STREET
JACKSON, MS 39201
(601)948-2683
akelly@co.hinds.ms.us

CERTIFICATE OF SERVICE

I, attorney Alison Kelly, do hereby certify that I have this day electronically or hand delivered a true and correct copy of the foregoing pleading to the following interested parties at their usual and customary place of business:

Greta Harris
Assistant District Attorney

Randy Harris
503 S State St
Jackson, MS 39201-5306
rharris51043@yahoo.com

SO CERTIFIED on this the 14th day of January, 2015.

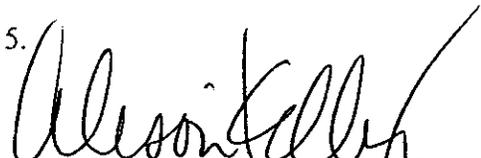

ALISON KELLY



EXHIBIT: A

AFFIDAVIT OF INDIGENCY

STATE OF MISSISSIPPI
COUNTY OF HINDS
CITY OF JACKSON
VS.

Case Number: _____
2014-162723

Dewayne Thompson

I, the undersigned, being first duly sworn, depose and say:

I am the Defendant in the above named and styled cause and I am now confined in the Jackson City Jail in Jackson, Mississippi.

I am absolutely destitute and own no personal property or automobiles of any kind whatsoever, nor are there any monies or property due and owing to me from any person. I have no money on deposit in any bank or savings institution. I am unable to obtain any pay counsel to defend me or to pay any incidental expenses which may be incurred in the conduct of my defense.

I am desirous of having this Court appoint counsel to defend me on the felony charge for which I ~~am incarcerated.~~

I, therefore, respectfully ask this Court to appoint able and conscientious counsel to represent and defend me herein.

I have made no previous application for this relief. *PD*

Dewayne Thompson
Defendant

587-77-9022
Social Security Number
12/05/94
Date of Birth

SWORN TO AND SUBSCRIBED TO BEFORE ME, This the 2 day of Sept, 2014.

[Signature]
MUNICIPAL JUDGE

INITIAL APPEARANCE
IN THE MUNICIPAL COURT OF JACKSON, MISSISSIPPI

CITY OF JACKSON
COUNTY OF HINDS
STATE OF MISSISSIPPI

State of Mississippi vs. THOMPSON, DEWAYNE *Courtney*

Charge(s): CAPITAL MURDER

Case Number: 2014-162783

Defendant's social security number is 587-77-9022

Defendant's Date of Birth: 12-5-94 *19 yrs old*

Bond Amount: \$ NO BOND

*4244 Lynda St
Jackson, MS 39209
601 948-5648 HM
Grandmother: Minnie
Bracham*

I DO HEREBY certify that I have this day advised the above named defendant:

1. Of the charge(s) against him/her; and
2. That the defendant is not required to speak and that any statements he makes may be used against him; and
3. ~~That if the defendant is unrepresented, he has the right to assistance of counsel, And that if he is unable to afford counsel, an attorney will be appointed to represent him; and~~
4. That the defendant has the right to Communicate with counsel, family or friends, and the reasonable means will be provided to enable him to do so; and
5. That the defendant has a right to a preliminary hearing.

The defendant advised me that his attorney is: ~~Will Harrison Atty~~ *P.D.*

This the 2 day of Sept 20 14

[Signature]
Municipal Judge

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON, MISSISSIPPI

STATE OF MISSISSIPPI

CHARGE(S) Capital Murder,

VS.

Kidnapping, Auto Theft

Dewayne Thompson

Agency Case No. 2014-162783

ORDERING TRANSFERRING CASE TO HINDS COUNTY COURT

This day this cause came before the Court on motion ore tenus of the Defendant, Dewayne Thompson, to have this cause transferred to the County Court of Hinds County, Mississippi for the purpose of conducting a Preliminary Hearing in a Court of Record, and the Court being duly advised in the premises is of the opinion that the motion is well taken and should be granted;

Further, bail is set in the following amount \$ No Bond

IT IS HEREBY ORDERED AND ADJUDGED that this cause be transferred to the County Court of Hinds County, Mississippi for the purpose of conducting a Preliminary Hearing.

SO ORDERED AND ADJUDGED THIS, the 10th day of September, 2014.


MUNICIPAL COURT JUDGE

Office of the Hinds County Public Defender
429 Tombigbee Street
P.O. Box 23029
Jackson, MS 39225
(601) 948-2683

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED

CHARGE(S): Capital Murder, Auto
Theft, Kidnapping

OCT - 6 2014

VS.

BARBARA DUNN, CIRCUIT CLERK

CASE NO. 14- 852

DEWAYNE THOMPSON

BY _____ J.C.

DEFENDANT

ORDER BINDING DEFENDANT TO AWAIT ACTION OF THE GRAND JURY
AND SETTING BOND/SETTING BAIL

The above-named defendant having been brought before the County Court for a preliminary hearing on the above charge(s), and the Court having heard testimony and been presented evidence concerning the charged offense(s), finds that it appears that there is probable cause to believe that an offense has been committed, to-wit: Capital Murder, Auto Theft, Kidnapping

and that the defendant committed said offense(s).

Accordingly, the above-named defendant is hereby bound over to await the action of the grand jury.

Further:

() Bail is set in the amount of \$ and conditioned upon his/her appearance before the Circuit Court of the First/Second Judicial District of Hinds County, Mississippi at the next regular term thereof to answer unto said charge and to remain from day to day and term to term until discharged by law.

() Bail is hereby denied, as defendant is on probation/parole.

(X) Bail is hereby denied, under MISS. CONST., Art., 3, Section 29(I)(a), as amended, as defendant has this date been bound over to await action by the grand jury for a capital offense where the proof is evident or presumption great.

() Bail is hereby denied, under MISS. CONST., Art., 3, Section 29(I)(b), as amended, as defendant has this date been bound over for action by the grand jury for a capital offense and he/she has previously been convicted of a capital offense or other offense punishable by imprisonment for a maximum of twenty (20) years or more.

() Bail is hereby denied, under MISS. CONST., Art. 3, Section 29 (2), as amended, as defendant was free on bail for a previous felony at the time of the offense herein, which has this date been bound over for action by the grand jury and being an offense punishable by death, life imprisonment or imprisonment for more than five (5) years, or grand larceny.

(X) Bail is hereby denied, under MISS. CONST., Art. 3, Section (29)(3), as amended, as the offense herein, which has this date been bound over for action by the grand jury, is punishable by imprisonment for a maximum of twenty (20) years or more by life imprisonment, and the proof is evident or presumption great, and:

(✓) the release of the defendant would constitute a special danger to another person and/or to the community, or

(✓) no condition or combination of conditions will reasonably assure the appearance of the defendant as required.

Conditioned upon his/her appearance before the Circuit Court of the First Judicial District of Hinds County, Mississippi at the next regular term thereof to answer unto said charge(s) and to there remain from day to day and term to term until discharged by law.

If the Defendant remains in jail without posting bond and is not served a capias after indictment by a grand jury by N/A he/she shall be released from custody on this charge for lack of prosecution without further order of this Court.

A copy of this Order shall be immediately delivered to the Hinds County District Attorney's Office and the attorney for the defendant.

This the 6th day of October, 2014.


COUNTY COURT JUDGE

Alison Kelly for Lynn Watkins, Attorney for Defendant
Walter Bleck, Prosecuting Attorney

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF

FILED
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

DEC 18 2014

Case No.

14-0-962 ch-2

BARBARA DUNN, CIRCUIT CLERK

Charge(s)

Murder & Armed Conspiring

Dewayne Thompson

Address: 4244 Lynda St

Telephone Number: 601-948-5648

Date of Birth: 12/05/94 Age: 20 Social Security Number: 587-77-9622

AFFIDAVIT OF INDIGENCY

Pursuant to Miss. Code Ann. § 25-32-9, any defendant seeking to have an attorney appointed to represent him/her in the above-styled cause of action shall answer the following questions. A defendant should ask for assistance from the Court if he/she does not understand any of the questions listed below.

- 1) Do you have a job? Yes No
If yes, where do you work: _____; Amount earned per month: \$ _____
- 2) Who do you live with? Grandmother, Brothers
Are you married? Yes No; Does your husband/wife work? Yes No;
If yes, where: _____; Amount earned per month: \$ _____
How many children/dependents do you have: 2
Do you pay child support? Yes No; If yes, list the amount paid per month: \$ _____
- 3) In the past 12 months, have you received money from any other source, including but not limited to: retirement, unemployment, life insurance benefits, inheritance, social security, etc.? Yes No
If yes, list the source: _____; Amount: \$ _____
- 4) Do you have any cash or any money in a bank account? Yes No
If yes, list the source: _____; Amount: \$ _____
- 5) Do you own a vehicle? Yes No
If yes, list the type of vehicle: _____
Is the vehicle paid for? Yes No If No, list the amount owed: \$ _____
- 6) Do you own a house, land, or other valuable property? Yes No
If yes, list type of property: _____

By signing below, I certify that I desire to have counsel appointed by this court to represent me on the above-referenced charge(s). In support of this request, I have answered the preceding questions related to my ability to pay and retain an attorney. I swear or affirm that the answers are true and reflect my present financial status. I hereby understand that a false statement or answer to any question(s) in this affidavit may subject me to be arrested and charged with perjury. I further understand and acknowledge that if the court appoints an attorney to represent me, the court may require me to pay the fees and expenses of the court appointed counsel.

Sworn and subscribed before me this,
the 17th day of December, 2014.

Judge/Notary

Signature of Defendant

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED

VS.

DEC 17 2014 Case Number 14-0-962 ct 1-2

Dewayne Thompson

BARBARA DUNN, CIRCUIT CLERK
D.C.

ARRAIGNMENT ORDER, TRIAL SETTING, MOTION SETTING AND
GUILTY PLEA DATE ORDER

THIS DAY the above-referenced defendant appeared in open court, in his/her own person and legal counsel, for arraignment on the charge(s) herein, whereupon said defendant acknowledged that he/she was previously served with a copy of the indictment against him/her, waived the formal reading thereof, and entered a plea of "not guilty."

IT IS HEREBY ORDERED:

1. Any plea of guilty after the last scheduled plea date before trial, will be considered an 'open' plea and no recommendation from the District Attorney will be considered;
2. A status conference is set at 11:00 a.m. on the 17th day of February, 2015. The State of Mississippi, defendant, and the defendant's attorney of record shall appear before the Court for the status conference;
3. Pursuant to U.R.C.C.C. 8.02, the following pre-trial motions shall be filed and served no later than the 27th day of February, 2015: discovery requests, motions for severance, and motions for mental examination.
4. All other motions not specifically listed in Section 3, *supra*, shall be filed and served no later than twelve (12) days prior to the date of trial,
5. Trial is set for 1:00 p.m. on the 26th day of May, 2015, or commenced on any day that week, at the Hinds County Courthouse in Courtroom 3.

SO ORDERED AND ADJUDGED, this the 17th day of December, 2014.


Jeff Wehl, Sr.
Circuit Court Judge

Bond is set at \$ RENY
1000

Attorney Appointed _____ Attorney Retained _____
Attorney Status on January 7, 2015 @ 3pm

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

FILED

STATE OF MISSISSIPPI

DEC 22 2014

VS.

BARBARA DUNN, CIRCUIT CLERK Cause Number: 14-0-962 ct 1-2

DEWAYNE THOMPSON ^{BY} _____ ^{D.C.}

**ORDER APPOINTING COUNSEL FOR
INDIGENT DEFENDANT IN A CRIMINAL CASE**

This cause came on to be heard on Defendant's request for the appointment of counsel in the above styled and numbered cause. Having reviewed the indigent status of the Defendant and being fully advised in the premises, the Court finds that the Defendant is indigent and the court should appoint counsel in the herein criminal cause.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's request for appointment of counsel, due to indigency, is hereby granted and finding good cause per Miss. Code Ann. §25-32-13, appoints Attorney Randy Harris, MSB # 1975, as the attorney of record to represent Defendant in trial and litigation proceedings within the courts of Hinds County, Mississippi. This Order shall serve as an appearance for the afore-mentioned attorney and will relieve him/her of the duty of filing a formal Entry of Appearance with the Circuit Clerk. Any changes to the attorney of record must be made by motion and approved by the Court per U.R.C.C.C. 1.13. Nothing within the order shall be construed to require the named attorney to represent Defendant in any appeal to State or Federal Courts. Accordingly, any request for appointment of counsel for appeal purposes must be granted by separate order of the court.

SO ORDERED AND ADJUDGED, this the 19 day of DEC, 2014.

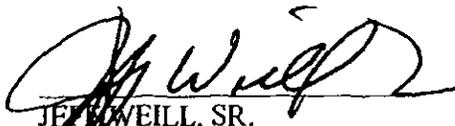

JEFF WEILL, SR.
CIRCUIT COURT JUDGE

EXHIBIT "A.1"

**Letter from Judge Weill to Hinds County
Board of Supervisors**

JEFF WEILL, SR.
HINDS COUNTY COURTHOUSE
P. O. BOX 22711
JACKSON, MISSISSIPPI 39225-2711

CIRCUIT JUDGE
7TH CIRCUIT COURT DISTRICT
COUNTY OF HINDS

601-968-6661
601-973-5541 FAX
JWEILL@CO.HINDS.MS.US

January 15, 2015

VIA INTEROFFICE AND ELECTRONIC MAIL

Hinds County Board of Supervisors
316 S. President St.
Jackson, Mississippi 39201

Re: Budget Item Concerning Hinds County Public Defender's Office

President Calhoun, Vice-President Greer and Supervisors,

I am writing this letter to provide an advance explanation regarding an upcoming budget expense in the circuit court due to an unfortunate series of issues caused by a Hinds County employee. As you know, the Hinds County Public Defender Michele Purvis-Harris employs various assistant public defenders to handle indigent criminal appointments in the circuit courtrooms of the four circuit court judges. When a person charged with a crime is assigned to my docket, the law requires me to determine whether that criminal defendant is indigent, and if so found, to appoint counsel, either through the office of the public defender or through separately appointed private counsel. If the Court appoints the office of the public defender, it is Ms. Harris's policy to assign the cases to the assistant public defenders within her office without involvement by the Court.

Under Ms. Harris's current assignment system, she appoints assistants to serve in each judge's courtroom. Currently, Ms. Harris has assigned assistant public defenders Alison Kelly, Greg Spore, and Michael Henry to my courtroom. Accordingly, when I appoint the office of the public defender to a case, Ms. Harris then assigns the case to Ms. Kelly, Mr. Spore or Mr. Henry without any input from the Court. The issues requiring this letter involve Assistant Public Defender Alison Kelly. Unfortunately, among many other problems with Ms. Kelly which I will not detail here, ~~I have recently been informed that Ms. Kelly is engaged in the private practice of law, which is directly contrary to Mississippi law applicable to full-time assistant public defenders. Ms. Kelly has apparently been participating in private practice cases throughout her tenure as a full-time assistant with the public defender's office. Per Miss. Code Ann. §25-32-5, "[n]o full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law." In addition, it appears that Ms. Kelly has maintained a private business entity with the Mississippi Secretary of State's office under the name of Alison Oliver Kelly, PLLC, which she reportedly uses occasionally in her private law practice and which is registered to an address in Madison, Mississippi, in the Reunion residential subdivision located in Madison County where Ms. Kelly apparently resides, contrary to the requirement that county employees reside within Hinds County.~~

Ms. Kelly is the senior assistant public defender assigned to my courtroom, and currently she participates in almost every criminal matter on my docket- ranging from revocations to jury trials- involving the public defender's office. Even if cases are assigned to Mr. Henry or Mr. Spore by Ms. Harris, Ms. Kelly participates as co-counsel in virtually every matter. As a result, to ensure appointment of competent, law-abiding representation for the indigent defendants assigned to my docket, as required by the Constitutions of the United States and the State of Mississippi, I recently began assigning indigent appointments to separately appointed counsel, finding "good cause" for the same pursuant to Miss. Code Ann. §25-32-13. I will continue to permit the other assistant public defenders to serve as counsel on their pending cases and will allow them to assume Ms. Kelly's case assignments, unless good cause is shown to preclude the same. However, I have determined that "good cause" has been shown to reassign all of Ms. Kelly's currently pending cases and "good cause" has been shown to preclude Ms. Kelly from participating in any matter involving indigent representation in my courtroom, as provided by Mississippi law.

I felt that it would be beneficial to inform the board members of these circumstances in your role as "authorize[rs]" of "assistant public defenders" pursuant to Miss. Code Ann. §25-32-3. I also want the board to be aware that Ms. Kelly's failure to comply with the law and the requirements of her position will necessarily result in some additional expense by way of appointment of separate counsel. However, rest assured I will only appoint separate counsel when necessary to ensure competent representation, and I will continue to be a good steward of county funds. To that end, I will continue to require sworn verification of indigency prior to appointing counsel, and if a Defendant is shown to have sufficient financial means during the pendency of the case, I will enforce the requirement that he or she contribute to the cost of appointed counsel.

Thank you for your attention to this matter, and please feel free to contact me with any questions. There are many other examples of Ms. Kelly's failures to comply with the Mississippi Rules of Court both in and outside of the courtroom, which I have omitted here for the sake of brevity. If you need additional information, please let me know.

Sincerely,



Jeff Weill, Sr.

Cc (via electronic mail):

Hinds County Board of Supervisors, all members
Michele Purvis-Harris, Hinds County Public Defender
Judge Tomie Green, Senior Circuit Judge
Carmen Davis, County Administrator
Pieter Teeuwissen, Counsel for Board of Supervisors
Robert Smith, District Attorney, via Brad Hutto, Assistant DA

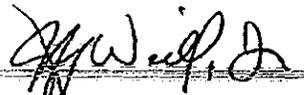
EXHIBIT "A.2"

Letter from Judge Weill to Michele Purvis Harris

In order to aid your review of this matter, I enclose two examples of Ms. Kelly's most recent failures to comply with the applicable rules. First, I have included a partial transcript from the December 8, 2014 trial of *State v. Mario Rucker*, during which Ms. Kelly impermissibly conferred with a State's witness during a short court recess which interrupted his trial testimony. Her explanation to the Court was that she "had a momentary lapse of whatever" when she told the witness "I'm sorry I just—I don't mean to be a bitch. I have a job to do. I'm just trying to save Mario's life." Transcript at 28-29. I have also included a recently filed *Motion for Recusal* in the *State v. Cortaia Washington* case. In the motion, Ms. Kelly quotes exclusively from one appellate case from the Mississippi Court of Appeals to support her position. See *Motion for Judicial Recusal*, pg. 3. Importantly, Ms. Kelly wholly failed to note that the Court of Appeals was reversed by the Mississippi Supreme Court on the very issue cited by Ms. Kelly's motion. This misleading litigation practice is directly contrary to M.R.P.C. 3.3(a)(3). The comments related to Rule 3.3(a)(3) state: "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal." *Id.* If Ms. Kelly attempts to argue that she did not "knowingly" make the false representation of law, then the issue becomes a total lack of diligence and/or competence as required by M.R.P.C. 1.1 and M.R.P.C. 1.3. Again, these are just the most recent of dozens of examples of Ms. Kelly's conduct in violation of the Mississippi Rules of Court.

Thank you for your attention to these issues, and I look forward to hearing from you on this matter very soon.

Sincerely,



Jeff Weill, Sr.

Enclosures

Cc: Darlene Ballard, Executive Director of Mississippi Commission on Judicial Performance
(without enclosures, via United States mail)

JEFF WEILL, SR.
HINDS COUNTY COURTHOUSE
P. O. BOX 22711
JACKSON, MISSISSIPPI 39225-2711

CIRCUIT JUDGE
7TH CIRCUIT COURT DISTRICT
COUNTY OF HINDS

601-968-6661
601-973-5541 FAX
JWEILL@CO.HINDS.MS.US

January 15, 2015

CONFIDENTIAL

VIA HAND DELIVERY AND ELECTRONIC MAIL

Honorable Michele Purvis-Harris
Hinds County Public Defender
Jackson, Mississippi 39202

Re: Attorney Disciplinary Responsibility

Dear Ms. Purvis-Harris:

I am writing this letter pursuant to my disciplinary responsibilities per Canon 3(D)(2) of the Mississippi Code of Judicial Conduct and to inform you of some changes in my criminal docket assignments. In your role as supervisor for the Hinds County assistant public defenders, I must, again, report multiple violations of the Mississippi Rules of Professional Conduct which raise substantial concerns as to the honesty, trustworthiness and fitness of one of your employees.

As you are well aware, my office has experienced an ongoing problem of unprofessional conduct by Assistant Public Defender Alison Kelly. ~~Ms. Kelly's conduct has negatively impacted her clients, and her lack of respect for the Court has become an unworkable distraction which circumvents the effective management of the criminal docket in my courtroom.~~ Unfortunately, despite my making you aware of the behavior exhibited by Ms. Kelly on more than one occasion, the problems continue and have significantly worsened. In addition, I have been informed that while employed as a full time assistant public defender, Ms. Kelly has been engaged in the private practice of law, which is in direct violation of Mississippi law governing full-time assistant public defenders. See Miss. Code Ann. §25-32-5 (stating "No full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law.").

At my request, you removed Ms. Kelly from my courtroom for a period of time in 2012. However, when Ms. Kelly was reassigned back to my courtroom by you after the resignation of former assistant Jacinta Hall, her disrespectful behavior and noncompliance with the rules of court quickly became an issue again. As a result, I requested (for the second time, but for the same reasons) that you, again, reassign Ms. Kelly to a different courtroom. In making my request, I informed you of a pattern of Ms. Kelly's detrimental conduct, which has continued and

EXHIBIT "B"

Motion for Recusal

IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO: 12-1-259 CRW

Richard Epps

DEFENDANT

MOTION FOR RECUSAL

COMES NOW, the Defendant in the above styled cause, by and through the Office of the Hinds County Public Defender, and files this his/her *Motion For Recusal*, and in support thereof would state unto this Honorable Court the following facts, to-wit:

1. Pursuant to Rule 1.15 URCCC, an affidavit by the party's attorney, with good faith belief that facts underlying the grounds for recusal are true, has been attached hereto setting forth the factual basis underlying the asserted grounds for recusal.
2. Further attached hereto as Exhibit A and incorporated herein by reference is a letter published on January 15, 2015, by this Court to the Hinds County Board of Supervisors (all members), Public Defender Michele Purvis Harris, Senior Circuit Court Judge Tomie T. Green, County Administrator Carmen Davis, Counsel for the Hinds County Board of Supervisors Pieter Teeuwissen, and Hinds County District Attorney Robert Shuler Smith. Importantly, the Court's letter to the Hinds County Board of Supervisors by this Court comes on the heels of motions filed by the Public Defender requesting clarification of representation status, where the Court *sua sponte* appointed private counsel where no conflict existed, yet the Court did not recuse the Public Defender who had been appointed in the lower court at the onset of the case. In the letter to the Hinds County Board of Supervisors, the Court asserts, without having complied with the statutorily mandated in court hearing of record, and among other disparaging remarks, that the appointments to private attorneys were necessary because the attorney Alison Kelly, attorney of record in

the case at bar, is both an incompetent¹²³ and non law-abiding attorney. (*Please refer to the statement on page 2 of the letter beginning at the end of line 4 and continuing through line 8*). That if the Court is to construe non-compliance with a civil statute, whether intentional or not, as non “law-abiding” behavior, then this Court is necessarily imposing an impermissible double standard with an adverse effect upon this Defendant in this Court. Specifically, no hearing on cause was ever conducted in this Court on the private appointments to which the Court refers in the letter to the Supervisors and other people. This Court has failed to comply with the law, namely Sections 25-32-9 and 25-32-12 Mississippi Code of 1972 Ann. (as amended)⁴, by failing to make an in court finding of good cause, prior to the appointment of private counsel to indigent defendants, when the law specifically requires an in court showing. By this Court’s own language, this Court would be precluded from hearing any of the cases referenced in the

¹ In the attached Exhibit A, the Court, while explaining the reasoning for appointing private attorneys for indigent counsel, asserted, “Even if cases are assigned to Mr. Henry or Mr. Spore, Ms. Kelly participates as co-counsel in virtually every matter. As a result, to ensure competent, law-abiding representation for the indigent defendants assigned to my docket, as required by the Constitutions of the United States and the State of Mississippi, I recently began assigning indigent appointments to separately appointed counsel...” By that statement alone, the Court has implied that in addition to Ms. Kelly being incompetent and a law-breaker, neither Mr. Henry nor Mr. Spore are competent law-abiding counsel either. However, in the attached Exhibit B, the Court asserted that “I will permit you to assign Ms. Kelly’s caseload among other public defenders...” If that is the case, the Court has no showing of cause to assign any Public Defender case to private counsel because those cases that were appointed to private counsel in December could have and should have been appointed to “other public defenders” at no additional expense to taxpayers.

² It should be noted that Attorney Alison Kelly received the 2012 *Mississippi Business Journal* distinction as being one of “Mississippi’s 50 Leading Attorneys.”

³ It should further be noted that Attorney Alison Kelly has been lead trial counsel in this and other Courts over the last four-year period in at least thirteen cases trying more than 20 counts, with multiple not-guilty verdicts or verdicts that were lesser than the indicted charge.

⁴ Section 25-32-9 states in relevant part: “(1) When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the public defender shall represent said person unless the right to counsel be waived by such person.” (emphasis added).

Section 25-32-13 states: “(1) If the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply. (emphasis added). (2) If the court finds that an indigent is a defendant in a case of such a nature that he cannot be properly represented by the public defender alone, the court shall appoint additional counsel to assist the public defender as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

Court's letter if "law-abiding" is a qualifying factor in the determination of fitness to practice law. An application of law by this Court, that employs a double standard, *per se* cannot be construed as fair and impartial conduct by the Court and as such is grounds for this Court's recusal from this case. It should further be noted that prior to the Court's appointment of counsel where no conflict existed, no Defendants made any request for counsel other than the Public Defender; and importantly, several of the Defendants have contacted the Public Defender and are upset with the Court's disruption of the continuity of representation by the Public Defender's Office.

3. The legal relationship in this cause is between the Defendant and the attorney, not between the Defendant and the Court. Therefore, because this Defendant has an attorney-client relationship with Attorney Alison Kelly⁵, this case should be transferred to Senior Circuit Court Judge Tomie T. Green for reassignment to the Court where the Public Defender assigns Ms. Kelly. In order to avoid the appearance of impropriety or any claim of failure to provide a fair and just adjudication in this case, the Court's *sua sponte* appointment of any attorney to this client is problematic.
4. Also attached hereto as Exhibit B and incorporated herein by reference is a letter dated January 15, 2015, delivered on the said date to Public Defender Michele Purvis Harris and Executive Director of Mississippi Commission on Judicial Performance Darlene where the Court makes several admissions that the Court can no longer be fair and impartial when it comes to matters relating to Attorney Kelly's clients. It is important that this Defendant has not made any request to this Court for reappointment of a new

⁵ Approximately March, 2014, this Court adopted a policy of appointing Hinds County Public Defender Michele Purvis" with a directive, "An entry of appearance shall be filed within seven (7) days of the entry of this order in the event Ms. Harris chooses to delegate the representation of this defendant to an Assistant Public Defender. The entry of appearance should be filed by the Assistant Public Defender who will serve as the attorney of record in the above-styled case." Per this Court's order, Attorney Alison Kelly is attorney of record in this case having made the Court ordered individual entry of appearance. It should be noted that no other Hinds County Circuit Court judge requires individual entries of appearance by Assistant Public Defenders and that this practice is unique to this Court.

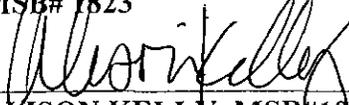
attorney nor has the Court asserted any specific adverse conduct of Ms. Kelly that directly relates to this Defendant. The Court did, however, by its own admission in this attached Exhibit B letter, asserted, whether expressly or implied, that the Court cannot be fair and impartial in cases where Attorney Kelly is counsel of record. Specifically, the Court stated: 1) "...Ms. Kelly's detrimental conduct, which has continued **has resulted in serious consequences for several clients...**" (*Please refer to page 1 of Exhibit B, last sentence and continuing to Page 2 first paragraph*); and 2) "Ms. Kelly's conduct has begun to have **direct adverse implications** on her ability to represent indigent defendants in my courtroom..." (*Please refer to page 2 of Exhibit B, third full paragraph, beginning line 7*). Further, the Court stated in that letter that Ms. Kelly will not be permitted to act as counsel for any indigent defendant on my docket in any capacity going forward. (*Please refer to page 2 of Exhibit B, last paragraph*).

5. Because of the "serious consequences for several clients" and "direct adverse implications" in this Court, the Court is confirming that the Court can no longer remain fair and impartial in this case.
6. In order to avoid the appearance of impropriety or any claim of failure to provide a fair and just adjudication in this case, the Court's *sua sponte* appointment of any attorney to this client is problematic. For that reason, and for the reason that the Court has self-proclaimed an inability to remain fair and impartial in cases where Attorney Kelly is counsel of record, the Court should recuse from this case for the foregoing reasons.

WHEREFORE, PREMISES CONSIDERED, the Defendant herein humbly moves this Court to recuse for the foregoing reasons and further moves this Court to transfer this case to Senior Circuit Court Judge Tomie T. Green for reassignment.

FURTHER, the Defendant herein humbly moves that this Court consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary, pursuant to Rule 1.15 URCCC.

SO MOVED on this the 20th day of January, 2015.


MICHELE PURVIS HARRIS
HIND COUNTY PUBLIC DEFENDER
MSB# 1823

ALISON KELLY, MSB#101050

CERTIFICATE OF SERVICE

I, ALISON KELLY, counsel of record for the Defendant, do hereby certify that I have this day hand delivered a true and correct copy of the foregoing *Motion to Recuse* to the usual and customary place of business of the following interested parties:

Senior Circuit Court Judge Tomie T. Green
Hinds Court Circuit Court Judge
Hinds County Courthouse – Second Floor

Hon. Robert Shuler Smith
Hinds County District Attorney
Hinds County Circuit Court House, Fifth Floor

Barbara Dunn
Hinds County Circuit Court Clerk
Hinds County Circuit Courthouse, Basement Level

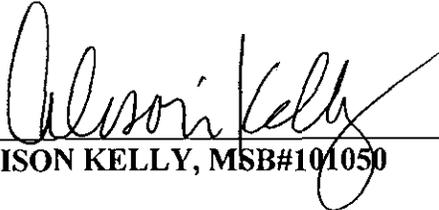
SO CERTIFIED on this the 20th day of January, 2014.


ALISON KELLY, MSB#101050

AFFIDAVIT:

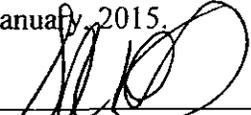
1. The Defendant herein, by and through counsel, moves for the recusal of Judge Jeff Weill in this cause because it has become apparent that the judge's impartiality might be questioned by a reasonable person knowing all the circumstances.
2. This affidavit incorporates the facts and circumstances underlying the asserted grounds for recusal that are the basis for this motion, in the body of the motion to which this affidavit is attached.
3. This affidavit is being filed with the good faith belief that the facts underlying the grounds stated herein are true and correct to the best of the affiant's reasonable interpretation of the supporting documents.
4. This motion is being filed within 30 days of the filing party reasonably discovering a complete set of facts underlying the grounds asserted: namely, the attached letters that constitute the basis of the recusal issues were published within the last 10 days.
5. The affiant requests that Judge Weill consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary, pursuant to Rule 1.15 URCCC.

SO SWORN on this the 20th day of January, 2015.


ALISON KELLY, MSB#101050

**STATE OF MISSISSIPPI
COUNTY OF HINDS**

SWORN AND ASCRIBED before me, undersigned authority in and for the
aforementioned State, on this the 20th day of January, 2015.


NOTARY PUBLIC

JEFF WEILL, SR.

HINDS COUNTY COURTHOUSE
P. O. BOX 22711
JACKSON, MISSISSIPPI 39225-2711

CIRCUIT JUDGE
7TH CIRCUIT COURT DISTRICT
COUNTY OF HINDS

601-968-6661
601-973-5541 FAX
JWEILL@CO.HINDS.MS.US

January 15, 2015

VIA INTEROFFICE AND ELECTRONIC MAIL

Hinds County Board of Supervisors
316 S. President St.
Jackson, Mississippi 39201

Re: Budget Item Concerning Hinds County Public Defender's Office

President Calhoun, Vice-President Greer and Supervisors,

I am writing this letter to provide an advance explanation regarding an upcoming budget expense in the circuit court due to an unfortunate series of issues caused by a Hinds County employee. As you know, the Hinds County Public Defender Michele Purvis-Harris employs various assistant public defenders to handle indigent criminal appointments in the circuit courtrooms of the four circuit court judges. When a person charged with a crime is assigned to my docket, the law requires me to determine whether that criminal defendant is indigent, and if so found, to appoint counsel, either through the office of the public defender or through separately appointed private counsel. If the Court appoints the office of the public defender, it is Ms. Harris's policy to assign the cases to the assistant public defenders within her office without involvement by the Court.

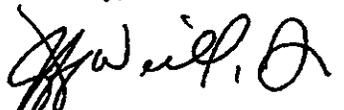
Under Ms. Harris's current assignment system, she appoints assistants to serve in each judge's courtroom. Currently, Ms. Harris has assigned assistant public defenders Alison Kelly, Greg Spore, and Michael Henry to my courtroom. Accordingly, when I appoint the office of the public defender to a case, Ms. Harris then assigns the case to Ms. Kelly, Mr. Spore or Mr. Henry without any input from the Court. The issues requiring this letter involve Assistant Public Defender Alison Kelly. Unfortunately, among many other problems with Ms. Kelly which I will not detail here, I have recently been informed that Ms. Kelly is engaged in the private practice of law, which is directly contrary to Mississippi law applicable to full-time assistant public defenders. Ms. Kelly has apparently been participating in private practice cases throughout her tenure as a full-time assistant with the public defender's office. Per Miss. Code Ann. §25-32-5, "[n]o full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law." In addition, it appears that Ms. Kelly has maintained a private business entity with the Mississippi Secretary of State's office under the name of Alison Oliver Kelly, PLLC, which she reportedly uses occasionally in her private law practice and which is registered to an address in Madison, Mississippi, in the Reunion residential subdivision located in Madison County where Ms. Kelly apparently resides, contrary to the requirement that county employees reside within Hinds County.

Ms. Kelly is the senior assistant public defender assigned to my courtroom, and currently she participates in almost every criminal matter on my docket- ranging from revocations to jury trials- involving the public defender's office. Even if cases are assigned to Mr. Henry or Mr. Spore by Ms. Harris, Ms. Kelly participates as co-counsel in virtually every matter. As a result, to ensure appointment of competent, law-abiding representation for the indigent defendants assigned to my docket, as required by the Constitutions of the United States and the State of Mississippi, I recently began assigning indigent appointments to separately appointed counsel, finding "good cause" for the same pursuant to Miss. Code Ann. §25-32-13. I will continue to permit the other assistant public defenders to serve as counsel on their pending cases and will allow them to assume Ms. Kelly's case assignments, unless good cause is shown to preclude the same. However, I have determined that "good cause" has been shown to reassign all of Ms. Kelly's currently pending cases and "good cause" has been shown to preclude Ms. Kelly from participating in any matter involving indigent representation in my courtroom, as provided by Mississippi law.

I felt that it would be beneficial to inform the board members of these circumstances in your role as "authorize[rs]" of "assistant public defenders" pursuant to Miss. Code Ann. §25-32-3. I also want the board to be aware that Ms. Kelly's failure to comply with the law and the requirements of her position will necessarily result in some additional expense by way of appointment of separate counsel. However, rest assured I will only appoint separate counsel when necessary to ensure competent representation, and I will continue to be a good steward of county funds. To that end, I will continue to require sworn verification of indigency prior to appointing counsel, and if a Defendant is shown to have sufficient financial means during the pendency of the case, I will enforce the requirement that he or she contribute to the cost of appointed counsel.

~~Thank you for your attention to this matter, and please feel free to contact me with any questions. There are many other examples of Ms. Kelly's failures to comply with the Mississippi Rules of Court both in and outside of the courtroom, which I have omitted here for the sake of brevity. If you need additional information, please let me know.~~

Sincerely,



Jeff Weill, Sr.

Cc (via electronic mail):

Hinds County Board of Supervisors, all members
Michele Purvis-Harris, Hinds County Public Defender
Judge Tomie Green, Senior Circuit Judge
Carmen Davis, County Administrator
Pieter Teeuwissen, Counsel for Board of Supervisors
Robert Smith, District Attorney, via Brad Hutto, Assistant DA

EXHIBIT: B

JEFF WEILL, SR.
HINDS COUNTY COURTHOUSE
P. O. BOX 22711
JACKSON, MISSISSIPPI 39225-2711

CIRCUIT JUDGE
7TH CIRCUIT COURT DISTRICT
COUNTY OF HINDS

601-968-6661
601-973-5541 FAX
JWEILL@CO.HINDS.MS.US

January 15, 2015

CONFIDENTIAL

VIA HAND DELIVERY AND ELECTRONIC MAIL

Honorable Michele Purvis-Harris
Hinds County Public Defender
Jackson, Mississippi 39202

Re: Attorney Disciplinary Responsibility

Dear Ms. Purvis-Harris:

I am writing this letter pursuant to my disciplinary responsibilities per Canon 3(D)(2) of the Mississippi Code of Judicial Conduct and to inform you of some changes in my criminal docket assignments. In your role as supervisor for the Hinds County assistant public defenders, I must, again, report multiple violations of the Mississippi Rules of Professional Conduct which raise substantial concerns as to the honesty, trustworthiness and fitness of one of your employees.

As you are well aware, my office has experienced an ongoing problem of unprofessional conduct by Assistant Public Defender Alison Kelly. ~~Ms. Kelly's conduct has negatively~~ impacted her clients, and her lack of respect for the Court has become an unworkable distraction which circumvents the effective management of the criminal docket in my courtroom. Unfortunately, despite my making you aware of the behavior exhibited by Ms. Kelly on more than one occasion, the problems continue and have significantly worsened. In addition, I have been informed that while employed as a full time assistant public defender, Ms. Kelly has been engaged in the private practice of law, which is in direct violation of Mississippi law governing full-time assistant public defenders. See Miss. Code Ann. §25-32-5 (stating "No full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law.").

At my request, you removed Ms. Kelly from my courtroom for a period of time in 2012. However, when Ms. Kelly was reassigned back to my courtroom by you after the resignation of former assistant Jacinta Hall, her disrespectful behavior and noncompliance with the rules of court quickly became an issue again. As a result, I requested (for the second time, but for the same reasons) that you, again, reassign Ms. Kelly to a different courtroom. In making my request, I informed you of a pattern of Ms. Kelly's detrimental conduct, which has continued and

'has resulted in serious consequences for several clients and has directly and negatively impacted the administration of justice in my courtroom. It seems obvious that the consequences of the same could have been "avoided or mitigated" had you taken "reasonable remedial action at that time." See M.R.P.C. 5.1(c)(2).

When I notified you of the issues concerning Ms. Kelly for a second time in 2013, you elected to continue Ms. Kelly's assignment to my courtroom. In your November 13, 2013 letter to me refusing my request, you specifically stated that "Attorney Kelly has assured me that she can and will continue to be professional and respectful in her dealings with the Court." Since that time, you have rarely appeared in my courtroom during any criminal court proceedings, either to participate or observe, and you have not made any attempt to follow up with me or my office regarding the status of Ms. Kelly's pledge to be respectful and professional, which she has not honored. Ms. Kelly's apparent inability to set aside her personal animosity for my rulings in court and her multiple displays of disrespect in violation of many applicable rules of court have continued, and even worsened, since I made my second report and request for a change in courtroom assignments to you. As her direct supervisor with knowledge of prior ethical violations, as far as I am aware you have refused to take any remedial action or mitigate her behavior in any way. The ongoing lack of professionalism and disrespect for the Court together with Ms. Kelly's failures to comply with the law concerning her employment, the timing of which is directly and detrimentally related to her indigent criminal caseload, leaves me no choice but to find that good cause has been shown to reassign Ms. Kelly's case load.

It is certainly unfortunate that we have reached this point. I understand that you manage many employees and many cases in your role as public defender, but the ethical problems and blatant non-compliance with Mississippi law and rules of court by Ms. Kelly require this action and warrant your attention. Please know that this issue is not something that I take lightly. I have sought advice from the Commission on Judicial Performance on several occasions concerning Ms. Kelly's behavior. I have been advised that I am duty-bound to fulfill my mandatory reporting obligations, as required by the judicial canons, to report Ms. Kelly's conduct to the appropriate disciplinary authority. I share this with you in confidence strictly due to your role as Ms. Kelly's supervisor.

Finally, please be assured that I will work with your office concerning this transition. I will permit you to assign Ms. Kelly's caseload among the other assistant public defenders if you so choose. I ask that you send me a list of the cases with the newly assigned assistant public defender within seven (7) days for docket management purposes. If the same is not received on or before Thursday, January 22, 2015, I will have no choice but to require your office to send a comprehensive list of Ms. Kelly's cases pending on my docket, and I will reassign them to separately appointed counsel, per Miss. Code Ann. §25-32-13. Ms. Kelly's conduct has begun to have direct adverse implications on her ability to represent indigent defendants in my courtroom. Accordingly, Ms. Kelly will not be permitted to act as counsel for any indigent defendant on my docket in any capacity going forward.

In order to aid your review of this matter, I enclose two examples of Ms. Kelly's most recent failures to comply with the applicable rules. First, I have included a partial transcript from the December 8, 2014 trial of *State v. Mario Rucker*, during which Ms. Kelly impermissibly conferred with a State's witness during a short court recess which interrupted his trial testimony. Her explanation to the Court was that she "had a momentary lapse of whatever" when she told the witness "I'm sorry I just—I don't mean to be a bitch. I have a job to do. I'm just trying to save Mario's life." Transcript at 28-29. I have also included a recently filed *Motion for Recusal* in the *State v. Cortaia Washington* case. In the motion, Ms. Kelly quotes exclusively from one appellate case from the Mississippi Court of Appeals to support her position. See *Motion for Judicial Recusal*, pg. 3. Importantly, Ms. Kelly wholly failed to note that the Court of Appeals was reversed by the Mississippi Supreme Court on the very issue cited by Ms. Kelly's motion. This misleading litigation practice is directly contrary to M.R.P.C. 3.3(a)(3). The comments related to Rule 3.3(a)(3) state: "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal." *Id.* If Ms. Kelly attempts to argue that she did not "knowingly" make the false representation of law, then the issue becomes a total lack of diligence and/or competence as required by M.R.P.C. 1.1 and M.R.P.C. 1.3. Again, these are just the most recent of dozens of examples of Ms. Kelly's conduct in violation of the Mississippi Rules of Court.

Thank you for your attention to these issues, and I look forward to hearing from you on this matter very soon.

Sincerely,



Jeff Weill, Sr.

Enclosures

Cc: Darlene Ballard, Executive Director of Mississippi Commission on Judicial Performance
(without enclosures, via United States mail)

EXHIBIT "C"

Motion for Stay of Proceedings and Request for Hearing

IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO: 12-1-259 CRW

Richard Epps

DEFENDANT

MOTION FOR STAY OF PROCEEDINGS AND
REQUEST FOR HEARING

COMES NOW, the Defendant in the above styled cause, by and through the Office of the Hinds County Public Defender, and files this his/her *Motion For Stay of Proceedings and Request for Hearing*, and in support thereof would state unto this Honorable Court the following:

1. On January 20, 2015, the Defendant filed a *Motion For Recusal* in this cause.
2. That a stay of proceedings is necessary pending a hearing and ruling on the recusal motion.
3. That a hearing on the recusal motion is requested so that resolution of the motion can be made on a timely basis.

WHEREFORE, PREMISES CONSIDERED, the Defendant herein humbly moves this Court to stay all proceedings in this case and set a hearing for the recusal motion during the already scheduled motion docket day, namely February 5, 2015 at 1:00p.m.

SO MOVED on this the 28th day of January, 2015.

Michele Purvis Harris
MICHELE PURVIS HARRIS
HIND COUNTY PUBLIC DEFENDER
MSB# 1823

Alison Kelly
ALISON KELLY, MSB#101050

CERTIFICATE OF SERVICE

I, ALISON KELLY, counsel of record for the Defendant, do hereby certify that I have this day hand delivered a true and correct copy of the foregoing *Motion to Stay Proceedings and Request for Hearing* to the usual and customary place of business of the following interested parties:

Senior Circuit Court Judge Tomie T. Green
Hinds Court Circuit Court Judge
Hinds County Courthouse – Second Floor

Hon. Robert Shuler Smith
Hinds County District Attorney
Hinds County Circuit Court House, Fifth Floor

SO CERTIFIED on this the 28th day of January, 2015.

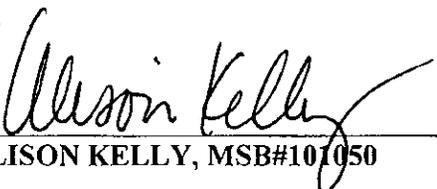

ALISON KELLY, MSB#101050

EXHIBIT "D"

**Opinion and Order Denying Motion For Recusal And
Motion For Clarification On Representation**

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

V.

RICHARD EPPS

FILED

FEB 11 2015 CAUSE NO. 12-1-259

BARBARA DUNN, CIRCUIT CLERK

BY _____ D.C.

OPINION AND ORDER DENYING MOTION FOR RECUSAL

THIS COURT, having considered Defendant's *Motion for Recusal*¹, and the Court being otherwise fully advised on the premises, without the necessity of a hearing, finds that the motion is not well-taken and should be DENIED, based on the following:

RELEVANT PROCEDURAL HISTORY

State v. Richard Epps, Circuit Court Cause No. 12-1-259

On December 13, 2012, the Hinds County Grand Jury indicted Richard Epps on one count of Business Burglary pursuant to Miss. Code Ann. § 97-17-33 and, as a result, a capias was issued by the Hinds County Circuit Clerk's Office.

On January 2, 2013, Assistant Hinds County Public Defender Alison Kelly filed a *Motion for Discovery and Request for a Plea Offer and Other Relief* in the above-styled cause of action. On January 20, 2015, Ms. Kelly filed the subject *Motion for Recusal*, and on January 28, 2015, Ms. Kelly filed a *Motion for Stay of Proceedings and Request for a Hearing*. As of the date of this Order, the Hinds County Sheriff's Office has yet to serve Mr. Epps with a copy of the capias

¹ Hinds County Public Defender Michele Purvis-Harris and Assistant Public Defender Alison Kelly have together signed and filed a *Motion for Recusal* concerning the undersigned in criminal cases involving 55 different defendants. Most of the motions were filed on January 20, 2015, and each motion is identical in typewritten content, varying only by a handwritten notation indicating the Defendant's name and case number. Despite the fact that each defendant's case is factually and procedurally unique, the substance of each *Motion for Recusal* is the same, often erroneously so. The Court will consider and independently rule on each *Motion for Recusal*, as the facts, the procedural status and the applicable legal analysis that relate to one defendant's case may not be applicable to another.

and indictment in the above-styled cause of action, therefore the court file and all contents thereof are sealed, pursuant to URCCC 7.04. A *capias* has not been executed; therefore, this Defendant has not been arraigned, his indigency status has not been reviewed, and counsel has not been appointed at the circuit court level.²

The Court, having considered the procedural history of this matter, as a result of the *Motion for Recusal* filed by Ms. Kelly and Ms. Harris on behalf of this Defendant, finds that Ms. Harris, Ms. Kelly and any other attorney affiliated with the HCPDO shall be removed as counsel and/or prohibited from representing this Defendant in this action for the violation(s) of grand jury secrecy requirements which are directly contrary to URCCC 7.04 and Miss. Code Ann. § 97-9-53. Further, the Court finds that the *Motion for Recusal* is not well taken and hereby is DENIED. The same is moot, as even absent the direct violation of the rules concerning grand jury secrecy and indictment confidentiality, the HCPDO has never been appointed to represent this Defendant.

APPLICABLE LAW

The role of the grand jury in our criminal justice system is of paramount importance. The United States Supreme Court has described the grand jury as “a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. As has been said before, the identity of the offender, and the precise nature of the offense,

² The Court notes after extensive research in the 55 cases where Ms. Kelly and Ms. Harris recently filed *Motions for Recusal*, many such actions by the HCPDO-directly contravening the grand jury secrecy requirements-were revealed for the first time. It was unknown to the Court that Ms. Kelly and/or the HCPDO could access sealed indictments until the recent research revealed this alarming pattern. It is also unknown to the Court as to the number of defendants who have been alerted to the filing of an indictment through this improper access.

if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning." *Blair v. U.S.*, 250 U.S. 273, 282 (1919) (internal citations omitted). The importance of maintaining grand jury secrecy is spelled out in URCCC 7.04 which states:

Grand jurors, except when called as a witness in court, shall keep secret the proceedings and actions taken in reference to matters brought before it, for six months after adjournment of the court at which they were grand jurors, and the name and testimony of any witness appearing before the grand jury shall be kept secret. **No grand juror, witness, attorney general, district attorney, county attorney, other prosecuting attorney, clerk, sheriff or other officer of the court shall disclose to any unauthorized person that an indictment is being found or returned into court against a defendant or disclose any action or proceeding in relation to the indictment before the finding of an indictment** or within six months thereafter or before defendant is arrested or gives bail or recognizance. No attorney general, district attorneys, county attorneys, or any other prosecuting attorneys or any other officer of the court shall announce to any unauthorized person what the grand jury will consider in its deliberations. If such information is disclosed, the disclosing person may be found in contempt of court punishable by fine or imprisonment.

James v. State, 777 So. 2d 682, 688 (Miss. Ct. App. 2000) (citing URCCC 7.04, emphasis added). Further, Miss. Code. Ann. § 97-9-53 provides:

If a grand juror, witness, district attorney, clerk, sheriff, or **any other officer of the court, disclose the fact of an indictment being found or returned into court against a defendant**, or disclose any action or proceeding had in relation thereto, before the finding of the indictment, or in six months thereafter, or until after the defendant shall have been arrested or given bail or recognizance to answer thereto, he shall be fined not more than two hundred dollars.

Id. (emphasis added). In addition, Mississippi law requires that: "An indictment returned into the clerk of the circuit court, shall not be inspected by any person but the judge, clerk, district attorney, and sheriff, until the defendant shall have been arrested or has entered into bail or recognizance for the offense." Miss. Code. Ann. § 99-7-15.

It is long-held, well-established jurisprudence that one crucial purpose of grand jury secrecy is "[t]o prevent the escape of those whose indictment may be contemplated." In *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681-682, n. 6 (1958) (citing *United States v.*

Rose, 215 F.2d 617, 628-629 (CA3 1954)). This purpose is highly applicable to the secrecy violations of counsel in the case *sub judice*. In discussing whether the unauthorized disclosure of grand jury materials constitutes a crime, the Fifth Circuit has reasoned that federal law “actually proscribes ‘obstruct(ing) . . . the due administration of justice,’ which means interfering with the procedure of a judicial hearing or trial.” *United States v. Howard*, 569 F.2d 1331, 1335-36 (5th Cir. 1978). The *Howard* court further articulated: “We think the statutory language is sufficiently clear and limited. If anyone unwittingly runs afoul of § 1503, it will not be on account of a misconstruction but because of an ignorance for which there is no excuse.” *Id.* Though the circumstances in *Howard* differed than those here, the fact remains that reckless violations of the grand jury secrecy requirements, which are apparently habitually done by the HCPDO, violate the underpinnings of our system of justice and may be considered obstructing justice under federal law.

In Mississippi, limited appellate law is available on this particular point, but the Mississippi Attorney General’s Office has provided guidance concerning grand jury secrecy on several occasions. In an advisory opinion issued in 2000, the attorney general stated:

Mississippi Code Annotated Section 97-9-53 and Mississippi Code Annotated Section 99-7-15 govern who may learn the name of a defendant who has been indicted for a felony but who has not been served a *capias*. These statutes are quite specific as to who can be given information regarding these unserved defendants, e.g., circuit judges, district attorney’s office, sheriff’s department, circuit clerks. **Failure to abide by these statutes can result in criminal sanctions. The intent of Mississippi Code Annotated Sections 97-9-53 and 99-7-15 is to keep the indictment a secret to allow the sheriff a reasonable time to serve the *capias* and to prevent the possible flight of the defendant upon learning of the indictment.**

Opinion No. 2000-01922000 WL 638812, at *1-2 (Miss. A.G. Apr. 17, 2000) (emphasis added).

In addition, a 2007 advisory opinion specifically addressed the rights of public defenders to be informed of sealed indictments:

Thus,...neither the public defender[']s office nor the attorney representing the defendant may have disclosed to them the fact of an indictment being found or returned into court against the defendant until the defendant has been arrested or given bail or recognizance for the offense.

Opinion No. 2007-000702007 WL 852265, at *1 (Miss. A.G. Feb. 23, 2007). Based on these advisory opinions and upon clear Mississippi law, the access and action taken by the HCPDO prior to the service of this Defendant's indictment is unlawful and therefore prohibits all members of the office from service as competent counsel in this matter at any time in the future. These actions are also subject to contempt proceedings under the law. However, the Court will not proceed with the same at this time, but will strongly consider harsh consequences for any future grand jury secrecy violations.

It is not known to this Court the avenues which the movants used to gain access to confidential indictment information, including case numbers, before this Defendant had been served with the indictment and while the court file was still sealed. However, all parties involved in the administrative process of docketing indictments, including those in the circuit clerk's office, shall take notice that should the Court become aware of any additional offense in violation of URCCC 7.04 and Miss. Code Ann. §97-9-53, a show cause notice will be issued and any offender may be subject to being held in contempt of court and subject to "fine or imprisonment." See URCCC 7.04.

IT IS, THEREFORE, HEREBY ORDERED AND ADJUDGED that the movants lack standing to assert the motion before the Court, making the same procedurally moot. In

addition, the Court finds that the *Motion for Recusal* is wholly without merit, and is hereby DENIED, based on the grounds cited herein.³

IT IS, FURTHER, HEREBY ORDERED AND ADJUDGED that the Hinds County Circuit Clerk's Office shall hereby remove all HCPDO counsel currently associated with this Defendant as counsel of record, based on the "good cause" shown herein and on "other good cause shown in the trial court" per Miss. Code Ann. §25-32-13.

SO ORDERED AND ADJUDGED this 11 day of February, 2015.



JEFF WALL, SR.
CIRCUIT COURT JUDGE

³ Lastly, Ms. Kelly and Ms. Harris filed 55 identical *Motions for Recusal*, but the Court, after spending countless hours on individual procedural case research, recognized that a "one size fits all" opinion would not suffice. Accordingly, this Court has written 55 separate opinions in 30 days or less and apologizes for any inadvertent typographical errors contained herein. There are many factual errors and misstatements in this Defendant's *Motion for Recusal*, which the Court does not address herein due to the determinative issue of grand jury secrecy.

EXHIBIT "E"

Motion For Reconsideration

File Copy

IN THE CIRCUIT COURT OF HINDS COUNTY MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO: 12-1-259CRW

RICHARD EPPS

DEFENDANT

MOTION FOR RECONSIDERATION

COMES NOW, the Defendant in the above styled cause, by and through the Office of the Hinds County Public Defender, and files this his *Motion For Reconsideration*, and in support thereof would state unto this Honorable Court the following facts, to-wit:

1. This *Motion For Reconsideration* relates to the *Opinion and Order Denying Motion For Recusal* filed by this Court.
2. That the Defendant reasserts and incorporates herein by reference all of the facts, circumstances and assertions set forth in the *Motion for Recusal* and further incorporates herein by reference all attached exhibits to that *Motion for Recusal*.
3. The Defendant enjoys standing to bring this motion because the Defendant had been appointed to the Hinds County Public Defender for representation in this cause by the City of Jackson Municipal Court and no order recusing the Hinds County Public Defender had been issued by any court at the time the Defendant's *Motion for Recusal* was filed upon this Court. (See attached *Affidavit of Indigency and Initial Appearance ordered in the Municipal Court*.)
4. Importantly, the Court's *Opinion and Order Denying Motion For Recusal* only addresses issues concerning the denial of the *Motion for Discovery and Request for Plea Offer and Other Relief* filed in this case. The Court is silent on any issues set forth in the *Defendant's Motion for Recusal* concerning the Court's inability to remain fair and

impartial on cases where Assistant Public Defender Alison Kelly is counsel of record through an appointment of the Defendant to the Hinds County Public Defender.

5. The Defendant further enjoys standing to bring this motion because neither URCCC 7.04 nor Miss. Code Ann. §97-9-53 applies to the facts and circumstances in this matter.

- a. The original *Motion for Discovery and Request for Plea Offer and Other Relief* referenced in Court's opinion, filed in response to the State's notification that an indictment had issued in this case, was filed with the Hinds County Circuit Court Clerk (Barbara Dunn who is an "authorized person" within the language and meaning of the laws cited by this Court) and further, copies were served upon Senior Circuit Court Judge (Tomie T. Green who is an "authorized person" within the language and meaning of the laws cited by the Court) and the Hinds County District Attorney (Robert Shuler Smith who is an "authorized person" within the language and meaning of the laws cited by this Court).
- b. The language of both the cited rule and cited statute necessarily allows for communication between officers of the Court and authorized persons; otherwise, under the Court's reading of the law, a Sheriff would never having standing to speak with any Defendant to arrange for pick up an indictment and there would never be a mechanism by which Defendants could ever efficiently be served with indictment.¹ It should further be noted that once an indictment issues and is assigned to a court, prior to service of the indictment upon the Defendant, the file is entered into the Dynacom system which is accessible by all of the employees of Hinds County.

¹ Under the Court's theory, in order to serve an indictment upon a Defendant in accordance with the law, the indictment would necessarily have to be served upon the Defendant by a grand juror, a witness to the grand jury, the attorney general, the county attorney, another prosecuting attorney, the clerk of the court, the sheriff, or any officer of the court. This theory creates an absurd outcome that would result in an unnecessary yet huge burden upon the taxpayers to serve indictments.

6. Because the Defendant does have standing to present his *Motion for Recusal* and *Motion for Reconsideration*, it is incumbent upon this Court to hear the *Motion for Recusal* and make a ruling on the same.
7. That it is a violation of the Defendant's state and federal constitutional rights to due process for this Court to refuse to hear any of the Defendant's pleadings based upon the reasons set forth in the *Court's Opinion and Order Denying Recusal*.

WHEREFORE, PREMISES CONSIDERED, the Defendant herein humbly moves this Court to reconsider its ruling and issue an opinion based upon the assertions set forth in the *Motion for Recusal*. The Defendant further moves that this Court vacate its *Opinion and Order Denying Motion For Recusal* as it fails to contemplate the substantive issues set forth in the *Motion for Recusal*.

SO MOVED on this the 17th day of February, 2015.

MICHELE PURVIS HARRIS
HIND COUNTY PUBLIC DEFENDER
MSB# 1823



ALISON KELLY, MSB#101050

CERTIFICATE OF SERVICE

I, ALISON KELLY, do hereby certify that I have this day hand delivered a true and correct copy of the foregoing *Motion for Reconsideration* to the usual and customary place of business of Hon. Robert S. Smith, District Attorney for Hinds County Mississippi.

SO CERTIFIED on this the 17th day of February, 2015.



ALISON KELLY, MSB#101050

**INITIAL APPEARANCE
IN THE MUNICIPAL COURT OF JACKSON, MISSISSIPPI**

CITY OF JACKSON
COUNTY OF HINDS
STATE OF MISSISSIPPI

State of Mississippi vs. EPPS, RICHARD W.

Charge(s): BUSINESS BURGLARY

Case Number: 2012-082363

Defendant's social security number is 425-35-2838

Defendant's Date of Birth: 9-18-1970 BM

Bond Amount: \$ 525,000.00 *AMS* FOR'S @ JUDGE JS

I DO HEREBY certify that I have this day advised the above named defendant:

1. Of the charge(s) against him/her; and
2. That the defendant is not required to speak and that any statements he makes may be used against him; and
3. That if the defendant is unrepresented, he has the right to assistance of counsel, And that if he is unable to afford counsel, an attorney will be appointed to represent him; and
4. That the defendant has the right to Communicate with counsel, family or friends, and the reasonable means will be provided to enable him to do so; and
5. That the defendant has a right to a preliminary hearing.

The defendant advised me that his attorney is: PD

This the 1ST day of May 2012

James M. [Signature]
Municipal Judge

Amis
none



AFFIDAVIT OF INDIGENCY

State of Mississippi
County of Hinds
City of Jackson

Case Number: 2012 0922363

vs. Richard W. Epps

I, the undersigned, being first duly sworn, depose and say:

I am the Defendant in the above named and styled cause and I am now confined in the Jackson City Jail in Jackson, Mississippi.

I am absolutely destitute and own no personal property or automobiles of any kind whatsoever, nor are there any monies or property due and owing to me from any person. I have no money on deposit in any bank or savings institution. I am unable to obtain any pay counsel to defend me or to pay any incidental expenses which may be incurred in the conduct of my defense.

I am desirous of having this Court appoint counsel to defend me on the felony charge for which I am incarcerated.

I, therefore, respectfully ask this court to appoint able and conscientious counsel to represent and defend me herein.

I have made no previous application for this relief.

[Signature]
Defendant

425 352838
Social Security Number
9/18/70
Date of Birth

SWORN TO AND SUBSCRIBED TO BEFORE ME, This the 1 day of May, 2012.

RD

[Signature]
MUNICIPAL JUDGE

EXHIBIT "F"

Order Denying Motion For Reconsideration

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

V.

CAUSE NO. 12-1-259

RICHARD EPPS

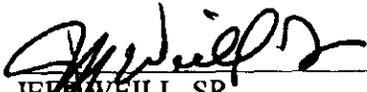
ORDER DENYING MOTION FOR RECONSIDERATION

THIS COURT, having considered Defendant's *Motion for Reconsideration*, and the Court being otherwise fully advised on the premises, without the necessity of a hearing, finds that the motion is not well-taken and should be DENIED. The Court finds that there is no basis for the *Motion for Reconsideration* under the circumstances presented here. Further, no applicable rule provides for reconsideration. See *McBride v. McBride*, 110 So.3d 356, 360 (Miss.Ct.App. 2013) (holding that there are two circumstances under which a trial court may entertain motions for reconsideration. The two circumstances arise in the Mississippi Rules of Civil Procedure, and they both serve to toll the *thirty* (30) day time period to file a Notice of Appeal. These circumstances clearly do not apply here, as this is a criminal case and the applicable time to appeal the denial of a *Motion for Recusal* is fourteen (14) days). The Court, herein, adopts the extensive findings and rulings contained in the *Order and Opinion Denying Motion for Recusal* filed previously in this matter.¹

¹ Ms. Harris and Ms. Kelly previously filed identical *Motions for Recusal* in roughly 56 different criminal actions on or about January 20, 2015 and January 28, 2015. This Court reviewed the factual and procedural status of each case separately and found it appropriate to enter a separate and unique order in each criminal action. All such orders were entered by this Court between February 10, 2015 and February 13, 2015. On February 17, 2015, Ms. Harris and Ms. Kelly filed 26 *Motions for Reconsideration*, each of which appears to contain erroneous legal and/or factual assertions which could have been set forth in the original motion, and none of which have any basis. The Court rests on the *Opinion and Order Denying Motion for Recusal* previously filed in this action and would refer any appellate court to that opinion for review of the facts and legal analysis specific to the above-referenced cause of action. In addition, the 26 *Motions for Reconsideration* filed on February 17, 2015 are replete with factual misrepresentations. This is so despite the fact that the Court addressed many of these same misrepresentations (many also made in the

IT IS, THEREFORE, HEREBY ORDERED AND ADJUDGED that the *Motion for Reconsideration* is wholly without merit, and is hereby **DENIED**, based on the grounds cited in this Court's *Opinion and Order Denying Recusal*, which was previously executed in this above-styled cause of action.

SO ORDERED AND ADJUDGED this 18 day of February, 2015.


JEFF WEILL, SR.
CIRCUIT COURT JUDGE

56 *Motions for Recusal*) in its 56 individual opinions concerning each motion. After issuing 56 individual opinions- which took many hours to complete- within the appropriate time period applicable to recusal, this Court is unable to continue to devote its resources to again specifically point out and correct the blatant misstatements made by the movants. The Mississippi Supreme Court has previously imposed harsh sanctions (a \$1,000 fine and a public reprimand) following an *en banc* show cause hearing in a situation involving a lawyer who made repeated false statements in a Motion for Recusal and again in a Motion for Reconsideration "even after being clearly informed by this Court that the statements were false." *Welsh v. Mounger*, 912 So.2d 823, 824 (Miss. 2005). Relatedly, the *Welsh* court held: "Even then, [the attorney] filed nothing with this Court to retract or apologize for these false statements. Making a false statement to this Court, repeatedly in the face of the truth, quickly approaches what many trial practitioners would maintain to be willful, wanton, and gross negligent behavior." *Id.* at 826.

EXHIBIT "G"

Email Correspondence between HCPDO and Court Administrator

Alison Kelly

From: Weills Court Administrator
Sent: Thursday, December 11, 2014 3:09 PM
To: Brad Hutto; Greta Harris; Ivon Johnson; Jamie McBride; Alison Kelly; Michael Henry; Greg Spore; Carter Smith; Faye Peterson; Leslie Brown; Damon Stevenson; Donald Boykin; Todd Coker; toddcoker123@gmail.com; Andy Sumrall; Terence High; aafram@sellerslawfirm.net; Francis Springer; cstewart@mississippitrial.com; art harris; Gerald A. Mumford; knottlaw; dexterwoodberry@yahoo.com; Carlos Tanner (carlos.tanner@thetannerlawfirm.com); Yemi Kings; dlvalent@bellsouth.net; baoberhousen@bellsouth.net; Peggy Blackwell; jeffg_houston@yahoo.com; Ray C.. Carter; aafram@sellerslawfirm.net; Keya Johnson; Franklin A. Garrison (frank@thegarrisonfirm.com); frankjones22h@comcast.net; Kevin@camplawfirm.com; Jared K. Tomlinson; Mary; Martin D Perkins; jonmarcking@eaveslaw.com; Charlinda M. Florence, Esq.; Matt Eichelberger; Clayton Lockhart; Melissa Gardner; bdguylaw@yahoo.com; Lisa Ross; Brent Southern; John Lyons; rfraser@thefraserlawfirm.com; Don Leland; Brandon Dorsey; attorneyshamsiddeen@yahoo.com; john colette; John Mcneal; Kenya Martin; Anders Ferrington; Thomas Powell; lass2311@aol.com; bernard@jonesmosley.com; 'SUE PERRY'; Marvin Sanders (msand@ago.state.ms.us)
Cc: Lisa Gertrude; Shondra Dotson; Shirley Summers
Subject: WEILL-Criminal Docket Call 12/16/14 @ 2pm
Attachments: 1-12-15 WEILL Criminal Trials.pdf; 1-20-15 WEILL Criminal Trials.pdf; 1-26-15 WEILL Criminal Trial.pdf; 2-9-15 WEILL Criminal Trials.pdf

Attached please find a copy of Judge Weill's criminal trial dockets for the January 2015 Term. There is a separate docket attached for each of the four (4) criminal trial weeks. Please review all attachments for any cases that you may have.

The docket call for the January Criminal Term will be held at **2:00 p.m. on Tuesday, December 16, 2014**, in Courtroom 3 of the Hinds County Courthouse in Jackson, MS. If you are the attorney of record for any of the cases listed on the attached trial dockets, you **MUST** provide an announcement for your case(s), even if the announcement is the same as one made at a previous docket call. **In lieu of appearing at the docket call, you may provide the following information via e-mail prior to 2:00 p.m. on Tuesday, December 16, 2014:**

- 1) Name of defendant(s)
- 2) Case number(s)
- 3) Current date of trial
- 4) A written announcement for each defendant that you represent (i.e.—for plea-with a corresponding plea date, trial, etc.)

Please remember to copy the assigned ADA on your e-mail to the Court.

If you call a case for trial, you will be required to attend a pre-trial conference to be held two (2) weeks prior to the date of trial.

If you fail to provide an announcement for your case either by e-mail or in person at the docket call, the Court will issue a Show Cause Order and possibly conduct a Show Cause Hearing. An attorney may be fined or held in contempt if he or she fails to appear at the Show Cause Hearing.

Alison Kelly

From: Weills Court Administrator
Sent: Friday, December 12, 2014 4:03 PM
To: Brad Hutto; Ivon Johnson; Greta Harris; Alison Kelly; Michael Henry; Greg Spore; knottlaw
Cc: Lisa Gertrude; Shirley Summers; Shondra Dotson
Subject: WEILL-Criminal Docket 12/17/14 at 9am
Attachments: 12-17-14 Revocation & Comp Hearings (WEILL 9am).pdf

Attached please find a copy of Judge Weill's docket for December 17, 2014 at 9:00 a.m. in Jackson.

With regard to the revocations, please note that Victor Young is the only new revocation on this docket. A copy of the revocation packet for Victor Young was sent to the ADAs and APDs earlier today. All other revocations have been set on a prior docket and therefore packets were previously forwarded to the ADAs and APDs via e-mail. However, please advise if you need an additional copy of any particular revocation packet.

Kelli Degnan
Court Administrator to Judge Jeff Weill, Sr.
Hinds County Circuit Court
P.O. Box 22711
Jackson, MS 39225-2711
Telephone: (601) 968-6679
Facsimile: (601) 968-5541
weillscourtadministrator@co.hinds.ms.us

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Alison Kelly

From: Alison Kelly
Sent: Monday, December 15, 2014 11:42 AM
To: Weills Court Administrator
Subject: Dockets this week

Kelli:

We have a docket tomorrow and Wednesday... do we also have one on Thursday or Friday... perhaps arraignments...

Thanks

☺

ak

Alison Kelly

From: Weills Court Administrator
Sent: Monday, December 15, 2014 3:26 PM
To: Alison Kelly
Subject: RE: Dockets this week

As stated in the e-mail sent last week regarding docket call, Judge Weill will hold a plea docket on Thursday, December 18, 2014 at 9am. That will be the last, formal criminal docket held this week.

Kelli Degnan
Court Administrator to Judge Jeff Weill, Sr.
Hinds County Circuit Court
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Sent: Monday, December 15, 2014 11:42 AM
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Subject: Dockets this week

Kelli:

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Thanks



ak

Alison Kelly

From: Alison Kelly
Sent: Monday, December 15, 2014 3:49 PM
To: Weills Court Administrator
Subject: RE: Dockets this week

Kelli:

Can you please tell me the date and time you sent the email... it is not showing up in my system (which is garbling emails daily) so I can search by date and time...

Thanks



ak

From: Weills Court Administrator
Sent: Monday, December 15, 2014 3:26 PM
To: Alison Kelly
Subject: RE: Dockets this week

As stated in the e-mail sent last week regarding docket call, Judge Weill will hold a plea docket on Thursday, December 18, 2014 at 9am. That will be the last, formal criminal docket held this week.

Kelli Degnar
Court Administrator to Judge Jeff Weill, Sr.
Hinds County Circuit Court
P.O. Box 22711
Jackson, MS 39225-2711
Telephone: (601) 968-6679
Facsimile: (601) 968-5541
weillscourtadministrator@co.hinds.ms.us

From: Alison Kelly
Sent: Monday, December 15, 2014 11:42 AM

Alison Kelly

From: Weills Court Administrator
Sent: Tuesday, December 16, 2014 5:00 PM
To: Brad Hutto; Ivon Johnson; Greta Harris; Alison Kelly; Michael Henry; Greg Spore; Carter Smith; knottlaw; Leslie Brown; bdguylaw@yahoo.com; John Lyons; Clayton Lockhart
Cc: Shirley Summers; Lisa Gertrude; Shondra Dotson
Subject: WEILL-Plea Docket 12/18/14
Attachments: 12-18-14 WEILL Plea Docket (9am Jackson).pdf

Attached please find a copy of Judge Weill's plea docket set for Thursday, December 18, 2014 at 9am in Jackson.

Kelli Degnan
Court Administrator to Judge Jeff Weill, Sr.
Hinds County Circuit Court
P.O. Box 22711
Jackson, MS 39225-2711
Telephone: (601) 968-6679
Facsimile: (601) 968-5541
weillscourtadministrator@co.hinds.ms.us

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Alison Kelly

From: Alison Kelly
Sent: Tuesday, December 16, 2014 10:46 AM
To: Weills Court Administrator
Subject: RE: WEILL-Criminal Docket Call 12/16/14 @ 2pm

Kelli:

Thanks so much... we got this one... what Michael, Greg and I are missing is the docket for the 18th... arraignments and other business... can you please send us a copy of that docket.

Thanks



ak

From: Weills Court Administrator
Sent: Monday, December 15, 2014 4:28 PM
To: Alison Kelly
Subject: FW: WEILL-Criminal Docket Call 12/16/14 @ 2pm

Ms. Kelly,

Per your request, I am re-sending the e-mail regarding Judge Weill's docket call.

Kelli Degnan
Court Administrator to Judge Jeff Weill, Sr.
Hinds County Circuit Court
P.O. Box 2711
Jackson, MS 39225-2711
Telephone: (601) 968-6679
Facsimile: (601) 968-5541
weillscourtadministrator@co.hinds.ms.us

From: Weills Court Administrator
Sent: Thursday, December 11, 2014 3:09 PM

Alison Kelly

From: Weills Court Administrator
Sent: Tuesday, December 16, 2014 10:51 AM
To: Alison Kelly
Subject: RE: WEILL-Criminal Docket Call 12/16/14 @ 2pm

The plea docket for December 18th will not be finalized until after today's docket call. The docket will be circulated to the parties once it is finalized.

Kelli Degnan
Court Administrator to Judge Jeff Weill, Sr.
Hinds County Circuit Court
P.O. Box 22711
Jackson, MS 39225-2711
Telephone: (601) 968-6679
Facsimile: (601) 968-5541
weillscourtadministrator@co.hinds.ms.us

From: Alison Kelly
Sent: Tuesday, December 16, 2014 10:45 AM
To: Weills Court Administrator
Subject: RE: WEILL-Criminal Docket Call 12/16/14 @ 2pm

Kelli

Thanks so much... we got this one... what Michael, Greg and I are missing is the docket for the 18th... arraignments and other business... can you please send us a copy of that docket.

Thanks
☺
ak

From: Weills Court Administrator
Sent: Monday, December 15, 2014 4:28 PM
To: Alison Kelly
Subject: RE: WEILL-Criminal Docket Call 12/16/14 @ 2pm

EXHIBIT "H"

Motion for Judicial Recusal filed in State v. Ashley Bryant

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 12-0-758

ASHLEY BRYANT

DEFENDANT

MOTION FOR JUDICIAL RECUSAL

COMES NOW, DEFENDANT ASHLEY BRYANT, by and through appointed counsel, and files this her Motion for Judicial Recusal and in support thereof would show unto the Court the following to-wit:

1. The Defendant along with the co-defendant, Cortaia Washington are jointly indicted and charged with witness intimidation arising out of an incident that occurred between several people in a retail store a number of days after a trial had occurred where the Defendant's nephew was being tried for unrelated charges.

2. The Defendants went to trial before the same jury during the week of April 8, 2013. After two days of hearing testimony and considering evidence the members of the jury were not able to reach a verdict and a mistrial was declared.

3. Ashley Bryant, seeks recusal of Judge Jeff Weill on the basis that a reasonable person with knowledge of all the circumstances would conclude that she cannot be

afforded a fair and impartial trial from this Honorable Court. In support of this allegation, Defendant would assert that the record in this cause establishes bias and impartiality on behalf of this court throughout the pendency of this cause as evidenced by the court's rulings, comments made by the court on the record both during the trial and during motion hearings and by other acts of the Court

4. The Defendant relies upon the Code of Judicial Conduct, Canon 3(C)(1), which requires disqualification of a judge when "his impartiality might reasonably be questioned, including but not limited to instances where: (a) he has a personal bias or prejudice concerning a party...."

5. Ashley Bryant asserts that this Court has demonstrated bias in numerous rulings which amount to a cumulative pattern of impartiality.

SPECIFIC FACTS IN THE RECORD, WHICH SUPPORT BIAS AND IMPARTIALITY

6. The record is uncontroverted that the District Attorney's Office does not desire to prosecute this case in a jury trial; however, this matter is presently set again for the week of February 2, 2015.

7. The Court set this trial during the week of February 9, 2015, with knowledge of the fact that Counsel

Furthermore, the court's refusal to accept the plea is in anticipation of the court's plan to sentence the defendant to the maximum penalty provided for in the Statute. The court heard the recommendations of the district attorney as to sentence during each of the three (3) hearings on the Guilty Plea Petitions. The recommendation for sentence was increased in severity each time the plea was re-set in an effort to satisfy this Court's desire for punishment of these defendants. However, due to the court's obvious preconceived belief that anything less than the maximum penalty provided for by the statute would be too lenient; the court rejected all plea agreements.

In Jenkins vs. State 570 So.2d 1191(Miss.1990) the

Mississippi Supreme Court stated:

It is fundamental that judges should be sufficiently detached and unencumbered from any proclivity towards predisposition of any matter that may come before them. This is the pervading theme throughout the Code of Judicial Conduct and the theme of impartiality. It is an integral factor, which permeates statutory, and common law.

23. In this case, this court has engaged in a pattern of bias and predisposition and has abandoned its impartial stance as evidenced by numerous rulings. This court has proven inability to remain neutral and unbiased up to this point. The Court is not neutral but is predisposed to the guilt of the Defendant. It would be manifest error for this court to refuse

to recuse and to preside over the re-trial because the court's bias would affect rulings on the admissibility of evidence and would have a prejudicial effect on the jury.

It is a matter of common knowledge that jurors ... are very susceptible to the influence of the judge.... Jurors watch closely his conduct, and give attention to his language, that they may, if possible, ascertain his leaning to one side or the other, which, if known, often largely influences their verdict. He cannot be too careful and guarded in language and conduct in the presence of the jury, to avoid prejudice to either party. Green v. State, 97 Miss. 834, 838, 53 So. 415, 416 (1910). See also West at 422-23; Thompson v. State, 468 So.2d 852, 854, 584 So.2d 757 (Miss.1985).

In the event that the court believes that he can set aside the preconceived conclusions about the guilt of the parties and the appropriate sentence; it is still incumbent upon the court To inquire whether a reasonable person apprised of all the circumstances could believe that the court could be impartial.

24. The aforementioned letter from this Court to the to the Board of Supervisors combined with a separate letter to Michelle Purvis dated January 15, 2015, sets forth allegations of fact totally unrelated to Leslie R. Brown, counsel for Ashley Bryant. However, the timing of the items of correspondence indicates that an apparently irreconcilable situation has erupted in the relations between this court and Attorney Kelly during the pendency and proceedings in this criminal action. As this Court is aware, these two cases have been so intertwined from the very

beginning that they were tried together before the same jury and the attorneys for the parties have worked very closely with each other to the extent that identical pleadings have been filed and have been argued on behalf of these co-defendants. Cortaia Washington has filed a Motion For Recusal based upon the allegations made by this Court in the aforementioned correspondence to the Board and to Ms. Purvis. Ashley Bryant reasonably believes that this Court will be unable to overcome its feelings of animosity towards Alison Kelly to reside over Bryant's case in an impartial and unbiased manner. The co-defendant, Cortaia Washington, will be a material witness in the Ashley Bryant case. Necessarily, Attorney Alison Kelly will be present in the courtroom during the course of Washington's testimony in this cause. Bryant is concerned that the problems and apparent animosity on behalf of this court towards Attorney Kelly will adversely affect the trial proceedings and negatively impact her case. Likewise, a reasonable person with knowledge of all the facts that have transpired in these proceedings would expect a negative impact during the trial of Ashley Bryant's case.

25. Canon 3(C)(1) requires the disqualification of a judge when "his impartiality might reasonably be questioned, including but not limited to instances where: (a) he has a personal bias or prejudice concerning a party" A judge is required to

disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality. Green, 631 So. 2d at 177 (quoting Jenkins v. State, 570 So. 2d 1191, 1192 (Miss. 1990)). A presumption exists that the judge, sworn to administer impartial justice, is qualified and unbiased, and where the judge is not disqualified under the constitutional or statutory provisions, "the propriety of his or sitting is a question to be decided by the judge and is subject to review only in the case of manifest abuse of discretion." Green, 631 So.2d at 177(quoting Ruffin v. State, 481 So.2d 312, 317(Miss. 1985)."

26. For the foregoing reasons, the Court is duty bound to recuse in this matter and transfer this case to the Senior Circuit Judge for reassignment.

WHEREFORE, PREMISES CONSIDERED, DEFENDANT, ASHLEY BRYANT respectfully requests that this Honorable Court enter it's Order of Recusal in the interest of due process, equal protection, and to promote fairness and justice and for the reasons set forth in this motion and in the attached affidavit.

SO MOVED, this the 2nd day of February, 2015.

ASHLEY BRYANT

/s/Leslie R. Brown
LESLIE R. BROWN, MSB 5350